ORIGINAL
230584

LAW OFFICES
MCCARTHY, SWEENEY & HARKAWAY, P.C.
SUITE 700
1825 K STREET, N.W.
WASHINGTON, D.C. 20006
(202) 775-5560

FACSIMILE
(202) 775-5574

E-MAIL
MSH@MSHPC.COM

WEBSITE
HTTP://WWW.MSHPC.COM

DOUGLAS M. CANTER
JOHN M. CUTLER, Jr.
ANDREW P. GOLDSTEIN
GARRY S. GROSSMAN
JEFFREY S. JACOBOVITZ
STEVEN J. KALISH
SUSAN J. KING
CHANNING D. STROTHER, Jr.

CHIA-CHEN SALLY CHU*
LISA S. NOVINS**
GABRIEL D. SOLL

* *Admitted to NY Bar*
***Admitted to MD Bar*

July 7, 2011

Cynthia T. Brown
Chief of the Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: Docket No. 42124
<u>State of Montana v. BNSF Railway Company</u>

Dear Ms. Brown:

On July 1, 2011, Complainant filed its Highly Confidential Opening Statement of Facts and Argument, in accordance with the Board's orders in this proceeding. A copy of that document was served that day on counsel for Defendant, BNSF Railway Company.

Complainant's Public Version of its Opening Statement of Fact and Argument was also due on July 1. It is instead being filed herewith. Putting aside the long holiday weekend, Montana and BNSF agreed that it would be more efficient for BNSF to have an opportunity to review the redactions that NAFCA proposed to make in the Highly Confidential version, rather than filing a redacted, public version unilaterally with BNSF thereafter having to pursue a possibly prolonged path of objections and other written exchanges with Montana.

BNSF reviewed Montana's proposed public version of its Opening Statement and the parties reached agreement today on the extent of redactions necessary for the Public Version filing. That version is enclosed herewith. We seek the Board's indulgence for our failure to file the Public Version on July 1, but we believe that the procedure we employed will more than make up for that delay in efficiency, and we request the Board to accept the Public Version for filing at this time.

Respectfully submitted,

Andrew P. Goldstein

Andrew P. Goldstein
John M. Cutler, Jr.
Attorneys for the State of Montana

cc: Samuel Sipe, Esq.
Linda Stein, Esq.

ORIGINAL

BEFORE THE

SURFACE TRANSPORTATION BOARD

Docket No. 42124

STATE OF MONTANA, COMPLAINANT

v.

BNSF RAILWAY COMPANY, DEFENDANT

OPENING STATEMENT OF FACTS AND ARGUMENT OF STATE OF MONTANA

Steve Bullock
Montana Attorney General
Chuck Munson
Assistant Attorney General
Montana Department of Justice
215 North Sanders
Helena, MT 59620
(406) 444-2026

John M. Cutler, Jr.
Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, PC
Suite 700
1825 K Street, N.W.
Washington, DC 20006
(202) 775-5560

Attorneys for State of Montana

Dated: July 8, 2011

I. INTRODUCTION

At issue in this proceeding is whether manipulative and deceptive practices by Defendant BNSF Railway, involving shipment size limitations imposed by BNSF that adversely affect mid-sized grain elevators, shippers and others in Montana, violate the Act's requirement that railroad practices must be reasonable. For reasons detailed herein by Complainant the State of Montana ("Montana") and in the attached Verified Statements of Witnesses Terry Whiteside (Complainant's Exhibit No. 1) and G.W. Fauth, III (Complainant's Exhibit No. 2), BNSF's practices must be found unreasonable, and the Board must order BNSF to remedy its practices by restoring shipment sizes for 50 cars or more previously offered to mid-sized elevators in its tariffs.

After encouraging the construction of more efficient, mid-sized grain elevators in Montana and maintaining rates based on shipment sizes aligned with elevator capacities, BNSF adopted a 48-car shipment size limit in 2009. This limit was not only below the mid-sized elevators' capacity, but was also intended to trigger the URCS make-whole adjustment, significantly reducing R/VC percentages on the shipments. These R/VC reductions, in turn, eliminated the ability to file STB rate challenges for mid-sized elevators representing nearly [redacted] of Montana wheat shipments to the Pacific Northwest ("PNW"). Fauth V.S., Table 1. The R/VC reductions also permitted unchallengeable BNSF rate increases, injuring Montana elevators and their farmer customers, and undermining the integrity of STB costing rules.

II. BACKGROUND

A. Rail Transportation in Montana

Montana shippers of grain and other commodities are captive to a single railroad to a greater degree than shippers in any other state, inasmuch as BNSF controls over 90% of rail freight in Montana. BNSF is the only rail carrier in much of the State, and elsewhere it is in a position to dominate other, smaller rail carriers. While this is not a rate case, BNSF market power is relevant to the issues presented, because competitive alternatives that might enable shippers to avoid adverse impacts of the challenged practices are unavailable. In addition, this case involves growers and distributors of the most important commodity Montana produces. Rail transportation of wheat is critical to Montana's economic success.

The size and location of Montana contribute to the dependence of Montana shippers on rail transportation in general, and BNSF in particular. Distances within Montana are large, limiting much of the competitiveness of trucking. From one corner of Montana to the other is a distance of roughly 750 miles. Compounding shippers' dependence on rail are the large distances between Montana grain origins and destination ports, and the large volumes of grain produced annually in the State. Montana is the 3rd largest wheat producer in the U.S., producing 141,090,000 bushels in 2010. Most Montana wheat moves to PNW export elevators in shipments traveling an average of over [redacted] miles. Fauth V.S. at 10.

Movements to Gulf Coast ports are even longer, and the relatively small amount of grain moving to the Great Lakes and beyond must still travel several hundred miles. Not surprisingly, the modal shares of railroads and trucking in transporting Montana wheat are 43.8 million ton miles and 5.2 million ton-miles respectively, according to 2007 Bureau of Transportation Statistics data.

Over the years, there have been complaints by Montana grain shippers as to BNSF rail rate and service quality issues, including most prominently the long-running rate challenge in the McCarty Farms case. The ICC's finding of unreasonable rate levels under a predecessor of the Three Benchmark approach was reversed by the D.C. Circuit,[1] and the Commission subsequently

[1] Burlington Northern R. Co. v. ICC, 985 F.2d 589 (D.C. Cir. 1993).

found that McCarty Farms had failed to establish unreasonable rates under the Full SAC test.[2] However, the Commission also found that BNSF had market dominance over Montana wheat shipments to PNW ports from mid-sized elevators like those at issue here, and over Montana barley shipments.[3]

Since McCarty Farms, BNSF grain rates have not been challenged in court or before the STB. However, the State of Montana, Montana Governor Schweitzer, and numerous agricultural interests in the State, including the Montana Wheat & Barley Committee, have participated in many STB Ex Parte proceedings in an effort to call attention to problems in dealing with rail transportation of agricultural commodities.[4] As explained in detail in the Verified Statement of Witness Terry Whiteside, this is a subject of critical importance for Montana.

In addition, high grain rates in Montana and North Dakota were noted in studies by the GAO and Christensen Associates,[5] as well as in a 2009 study prepared for the Attorney General of Montana by counsel and consultants for the State.[6]

---

2 McCarty Farms, Inc. v. Burlington Northern R. Co., 2 S.T.B. 460 (1997).

3 McCarty Farms, et al. v. Burlington Northern R. Co., 3 I.C.C. 2d 822, 827-839 (1987).

4 Rail Transportation of Grain, STB Docket No. Ex Parte 665; Rail Fuel Surcharges, Ex Parte No. 661; Simplified Standards for Rail Rate Cases, Ex Parte No. 646 (Sub-No. 1); Rail Capacity and Infrastructure Requirements, Ex Parte No. 671; Common Carrier Obligation of Railroads, Ex Parte No. 677; Railroad Industry's Cost of Capital, Ex Parte No. 664; and Study of Competition in the Freight Railroad Industry, Ex Parte No. 680; Review of Rail Competition and Access Issues, Ex Parte No. 575; The 25th Anniversary of the Staggers Rail Act of 1980: A Review and Look Ahead, Ex Parte No. 658; Rail Rate Challenges in Small Cases, Ex Parte No. 646; Arbitration – Various Matters Relating to its Use as an Effective Means of Resolving Disputes, Ex Parte No. 586; Major Rail Consolidation Procedures, Ex Parte No. 582 (Sub-No. 1); Review of Rail Access and Competition Issues, Ex Parte No. 575; and Competition in the Railroad Industry, Ex Parte No. 705.

5 Report GAO-07-94 at pp. 34-35; Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition (Christensen Report), Figure ES-3 and pp. 11-22.

6 Railroad Rates and Services Provided to Montana Shippers, available on the Montana Attorney General's website at www.doj.mt.gov/news/releases2009/20090226railroadreport.pdf.

Despite differences of opinion with BNSF, Montana Shippers and producers plainly depend on the railroad to transport their goods to markets, and they have cooperated in numerous ways with BNSF, in an effort to satisfy changing requirements in BNSF tariffs. Of particular importance for this case is the issue of BNSF grain shipment train sizes.

B. BNSF Grain Shipments by Mid-Size Montana Elevators

Some of the history of the rise of mid-sized grain elevators in Montana was summarized as follows in one of the ICC's McCarty Farms decisions:

> Prior to December 1, 1980, Montana wheat and barley moved only under single-car rates. On December 1, 1980, single-car rates were reduced and 26-car and 52-car rates were published. Subsequently, elevators capable of loading 26-car trains increased from 3 in 1979 to 10 by April 1984; 52-car unit-train facilities increased from zero to 42 during the same period. These data indicate that the predominant movements are 52-car trains. McCarty's samples from the 1982 waybill data confirm this. 52-car trains move 75% of all Montana rail wheat, 26-car trains move 20% and single cars five percent. For barley, 29% moves in 52-car trains, 30% by 26-car, and 41% by single car.

See 3 I.C.C. 2d at 827. The foregoing discussion, from a decision issued in 1987, does not address the subsequent rise of "shuttle" elevators, capable of loading over 100 cars of grain. As discussed by Witness Fauth, BNSF currently serves 13 of these shuttle elevators in Montana, which account for some [redacted] of total wheat carloads to the PNW. Fauth V.S. at 2.

It is important to understand that the growth of mid-sized elevators was no accident, but was effectively, for many elevators, a BNSF-mandated requirement for survival. See Whiteside V.S. at 4. For confirmation, see Burlington Northern Railroad Company – Abandonment – In Daniels and Valley Counties, MT, 7 I.C.C. 2d 308, 309-10 (1990).[7]

[7] In its dismissal motion, BNSF argued that this decision supported the practices now challenged by Montana, but the decision did not involve the agency's unreasonable practice jurisdiction, let alone URCS costing issues or gaming. Rather, the Commission reversed as legally

The Commission there found that:

> BNSF published in 1980 relatively low 52-car rates as an incentive to encourage construction of 52-car elevators, from which it could offer more efficient, less costly service.

The initial decision by the ALJ (reversed on other grounds) provides additional detail:

> The Staggers Rail Act became law in October 1980, providing the railroads with extensive flexibility in ratemaking. One result in grain transportation was a proliferation of reduced rates for volume shipments. That immediately placed the competitive position of single-car shippers in jeopardy.
>
> Applicant's [i.e., Burlington Northern's] volume rates on grain were established in December 1980. Applicant published 26-car and 52-car single-origin rates throughout its system at that time. In addition, "26-car multi-origin rates were put in as a transition rate for shippers while they upgraded their facilities to load unit train trains."
>
> * * * *
>
> Applicant did not merely encourage elevators on the Branch to upgrade facilities for 52-car shipments; it was "build or else," with no consideration as to geographic location, nor any study regarding potential viability of such 52-car operations.

Initial Decision, 7 I.C.C. 2d 272, 283 (1990), record citations omitted.

Today, the mid-sized elevators that BNSF wanted built in Montana are an integral part of the grain business in Montana. There are over 30 such elevators in Montana, with most located in the northeast corner of the state and in the "triangle", in north central Montana. Given their size, these elevators cannot ship in shuttle volumes, but can operate efficiently by loading 52 cars or more at a time.

The survival of these elevators is important to the State, but is not guaranteed. Producers in 1980 had an incentive to sell their grain to 52-car elevators rather than 26-car or single car el-

---

untenable an ALJ's attempt to shoehorn rate reasonableness concepts into an abandonment proceeding.

evators, because the lower per car freight rates paid by the larger elevators enabled those elevators to pay more to producers for their grain, if necessary, and still market the grain at competitive prices.

Despite the success of shuttle elevators, mid-sized elevators capable of loading 52-cars or more but less than shuttle volumes remain key participants in Montana grain production and transportation. Shuttle elevators do not have the capacity to handle all of the wheat Montana produces, and mid-sized elevators serve many producers foreclosed from using shuttle service because of capacity constraints or because mid-sized elevators are closer.[8] Mid-sized elevators in Montana also handle most shipments of barley and pulse crops (beans, lentils, etc.), and rotational crops, and are sources for farm equipment and supplies for many producers. Whiteside V.S. at 12.

The greater the differential, or "spread," between prices paid to farmers by larger elevators for agricultural commodities and prices paid by smaller elevators, the greater the incentive to bypass smaller elevators and try to use larger ones. Rail rates aside, any elevator of any size also has service needs. It must be able to obtain cars and service on a timely basis, pay ancillary charges, find destination buyers, etc.

Because BNSF's pricing and service quality can vary among elevator classes (and between elevators), BNSF's actions have a significant impact on the viability of elevators in Montana.

---

8 See generally the Supplemental Comments filed January 12, 2007 by Montana Wheat & Barley Committee, et al., in Ex Parte No. 665, Rail Transportation of Grain. Producers located far from shuttle elevators also incur greater costs in transporting grain by farm truck or motor carrier to the shuttle origins, leading to increased wear and tear, and maintenance costs, for Montana's road system. Id.

C. BNSF Tariff Changes in 2009

For many years, BNSF maintained the 52-car rates it instituted in the 1980s, though rate levels rose steadily. When Montana wheat shuttle rates were adopted in 2001, BNSF preserved separate rates for shipments in units of less than 110 cars. In 2008, BNSF modified its tariff by making the rates formerly applicable to shipments of 52-109 cars applicable to shipments of 48-109 cars. This change did not prevent mid-sized elevators from shipping in train sizes corresponding to the elevators' capacity of 52-cars or more. Fauth V.S. at 11.

However, in February 2009, BNSF cancelled its 48-109 car rates and substituted rates applicable only to shipments of 48 cars. Today, BNSF maintains rail rates for wheat shipments in single cars, 24-car units, 48-car units, and shuttle trains of 110 cars or more. Fauth V.S. at 7. Though the per car rate levels were not changed at the time the 48-car limit was imposed, the State of Montana expressed concern over the impacts of BNSF's shipment size limit for mid-sized elevators in the State. Discussions between the State and BNSF produced no resolution of the dispute, and the Complaint in this proceeding, challenging BNSF's shipment size limit as an unreasonable practice, followed.

III. ARGUMENT

A. The Board's Unreasonable Practice Jurisdiction Is Properly Invoked Here

When a complaint invokes the STB's unreasonable practice jurisdiction, there is no quantitative yardstick for measuring unreasonableness, as there is for cases challenging rate levels as unlawfully high under the SAC test. As the Board recently held:

> Whether a particular practice is unreasonable depends upon the facts and circumstances of the case. The Board gauges the reasonableness of a practice by analyzing what it views as the most appropriate factors.

Finance Docket No. 35305, Arkansas Electric Cooperative Corp. – Petition for Declaratory Order, decision served March 3, 2011 at 5. See also Granite State Concrete Co. v. STB, 417 F.3rd 85, 92 (1st Cir. 2005), noting that the Board has "broad discretion to conduct case-by-case fact specific inquiries ... in the wide variety of actual circumstances encountered."

The Board and reviewing courts recognize that unreasonable practice jurisdiction under 49 U.S.C. § 10702 is broad because there are many ways railroads may act unreasonably other than through the imposition of excessively high rates.

Without the protection of recourse to the Board to challenge rail practices, shipper protections mandated by Congress could be vitiated. Even a railroad ordered to reduce unreasonable rate levels could exercise its authority over terms and conditions of service to neutralize a maximum rate finding by providing poor service, or imposing conditions on service that would force shippers to accede to the railroad's demands. Shippers have complained for years about railroad measures that force shippers to absorb costs formerly borne by railroads, and there is an increasing problem with ancillary charges whose amounts cannot easily be challenged due to lack of standards. The STB's unreasonable practice jurisdiction is often the best or only means for seeking relief.

A review of the case law indicates that unreasonable practices often involve some form of manipulation, deceit or evasion by railroads, for their benefit and to the detriment of shippers. See, e.g., Dairyland Power Coop v. Union Pacific Railroad, STB Docket No. 42105 (use of fuel surcharges as a profit center); Parrish & Heimbecker, Inc. – Petition for Declaratory Order, Docket No. 42031, decision served May 26, 2000 (attempt to impose tariff surcharge on consignor where shipments moved under contracts with consignees); and Docket No. 35290, West

Point Relocation, Inc. and Eli Cohen – Petition for Declaratory Order, decision served October 29, 2010 (water carrier tariff imposing personal liability for charges upon corporate principal).

See also Arkansas Electric Cooperative Corp., supra (decision at 6):

> Certainly, any tariff provision must be reasonably commensurate economically with the problem it addresses, but requiring a formal cost-benefit analysis whenever a shipper challenges a new practice would unnecessarily limit the Board's discretion. There may be instances where a full, quantified cost-benefit analysis is warranted, but this is not that instance.

It is not unusual for firms to seek advantages vis-a-vis their customers. The railroads have sought for years to limit the scope of ICC and STB jurisdiction, arguing for the most generous definition of revenue adequacy, the most restrictive definition of market dominance, the greatest obstacles to shipper relief, etc. However, when these efforts succeed, the danger that shippers will be subject to abuse is most acute when a railroad has extensive market power, as BNSF does here. While the Board's unreasonable practice jurisdiction is not subject to a threshold finding of market dominance, unreasonable practices by monopoly railroads present the greatest risk of undermining the regulatory balance mandated by Congress.

B. BNSF's Shipment Size Limitation Adversely Affects Montana's Shippers and Agricultural Production and Distribution

The 48-car size limit imposed by BNSF on Montana's mid-sized elevators has had numerous adverse impacts on the elevators and their shipper customers in violation of the Act's guarantee of reasonable railroad practices. Not only are these impacts, and others that could be imposed in future years, contrary to the public interest, but they address no legitimate interest of BNSF itself.

1. BNSF's Shipment Size Limit Has Eliminated any Possibility of Challenging Many Rail Rates

As BNSF has admitted, it knew that replacing 52-109 car rates and 48-109 car limitations with a train size limit capped at 48 cars for shipments from mid-sized elevators would significantly reduce revenue to variable cost ratios for such shipments. This result was inevitable, given the way the STB's URCS costing works.

Witness Fauth explains in the attached Verified Statement that URCS costing employs a "make-whole" adjustment, under which overall system costs are adjusted in such a way that savings from more efficient trainload and unit train shipments are offset through the assignment of additional costs to single cars and shorter trains.

Obviously, there must be a cutoff between larger trains not subject to the adjustment and shorter trains to which the adjustment applies. Under current regulations, trains of fewer than 50 cars, i.e., 1-49 cars, are subject to the adjustment. See Ex Parte No. 431 (Sub-No. 2), Review of General Purpose Costing System and Fauth V.S. at 8-10. And in the case of wheat shipments to the PNW from mid-sized elevators in Montana, the impact of BNSF's 48-car shipment size limit was to cut up to 68 percentage points from the R/VC percentages, even with no change in the per-car rate levels. Fauth V.S. at 15, Table 3.

This manipulation of R/VC ratios was far from incidental or inadvertent. Witnesses Fauth and Whiteside were both present at a 2009 meeting of the National Association of Wheat Growers at which Mr. Kevin Kaufman, a senior BNSF official with responsibility for shipments of agricultural commodities, acknowledged that the 48-car shipment size limit was adopted with full knowledge of its impact on R/VC ratios. Mr. Richard Weicher, one of BNSF's attorneys, conceded at oral argument "we're certainly not denying that the URCS rationale was part of" the reason for the size limit. He went on to say that, in addition to profit maximization, BNSF wanted "to protect from under [sic] regulatory challenges."[9]

In addition, among the documents provided by BNSF in discovery was an email [redacted] defending the shipment size limit as follows:

[redacted]

BNSF Bates No. 82. See also BNSF Bates No. 780, where [redacted] "[redacted]" and BNSF Bates No. 782, where [redacted] BNSF "[redacted]"[10]

Such a significant change in R/VC percentages would be important under any circumstances, since the likelihood of rate relief in the event of a rate challenge is lower for rates producing low R/VC percentages than for rates producing high R/VC percentages. This effect is particularly pronounced under the Board's Three Benchmark approach.

However, when the 48-car shipment size limit was imposed by BNSF in 2009, the impact was even more dramatic, inasmuch as BNSF's change drove R/VC percentages for grain rates applicable to mid-sized elevators from well above the threshold of STB rate reasonableness jurisdiction, to below the jurisdictional threshold, due to operation of the URCS make-whole ad-

---

[9] Transcript of oral argument held November 30, 2010 as to BNSF's motion to dismiss in this case, at page 11.

[10] Copies of these Bates numbered BNSF pages are attached hereto as Attachment A.

justment applicable to trains of less than 50 cars. See Fauth V.S. at 15, Table 3, showing numerous movements for which R/VCs dropped from above 200% to below 180%.

Through this tariff change, BNSF effectively deregulated its own grain rates from mid-sized elevators, even though per car rate levels did not go down at all. The rates that had been subject to challenge as excessively high before the tariff change issued in February 2009 were immune from challenge by March 2009.

2. BNSF Has Positioned Itself to Impose Unchallengeable Rate Increases

Reducing R/VCs to below 180% of variable cost not only immunizes 48-car rates from reasonableness challenge, but enables the railroad to raise those rates, without fear of a challenge to the rate increases so long as the increases are to levels that do not exceed, or do not significantly exceed, the jurisdictional threshold. While Full SAC rate cases have sometimes established maximum reasonable rates at the jurisdictional threshold, the Three Benchmark process can find rates reasonable even if well over the threshold.

Witness Fauth has analyzed the extent to which BNSF's 48-car shipment size limit enables BNSF to impose rate increase that cannot be challenged. Since the shipment size limit took effect in 2009, BNSF has raised its rates on these shipments by as much as $1,185 per car, including fuel surcharges, and the increases remained immune from challenge as a legal or practical matter. If BNSF had applied these rate increases to former 52-car rates, they would have exceeded the STB's jurisdictional threshold by as many as 100 percentage points. V.S. at 15.

The smaller the volume of wheat being shipped by an elevator, the higher the rate must be above 180% of variable cost to sustain a challenge before the STB. Accepting the Board's estimate that a Three Benchmark case could be brought for $250,000, it would make no sense for a captive shipper to consider instituting such a rate challenge unless the relief it could expect to obtain would exceed its litigation cost. Assuming a mid-sized elevator has the resources to litigate against a major railroad like BNSF, and is desperate enough to do so despite fear of retaliation in the many forms available to BNSF, the "payoff" would have to exceed $250,000. Challenging a rate with an R/VC percentage of 200% or so would almost certainly cost more than it could produce in relief.[11]

For these reasons, among others, the State of Montana felt that it should bring this unreasonable practice challenge.

3. <u>BNSF "Gamed" Its Own Well-Publicized Mediation/Arbitration Program</u>

In January 2009, at about the same time that BNSF was issuing the tariff change that imposed its 48-car shipment size limit on mid-sized elevators, BNSF announced a new program for mediation and arbitration of rate disputes with grain elevators in Montana. Fauth V.S., Appendix GWF-3.

This program, negotiated between BNSF and Montana Grain Growers Association ("MGGA"), is unusual in permitting farm producers to mediate or arbitrate rates and rate increases. However, the Alternative Dispute Resolution Agreement states that no relief is available as to BNSF rates producing R/VC percentages less than 180% for non-shuttle shippers, or less than 195% for shuttle shippers. Fauth Appendix GWF-3, Exhibit 1, Section 9.

As shown above and in the Fauth V.S., many rates with R/VC percentages that were well above 180% prior to imposition of the 48-car shipment size limit were transformed into rates with R/VC percentages below 180% upon imposition of that limit. As a result, BNSF can and

---

[11] The Three Benchmark relief cap gives BNSF a monetary incentive to charge excessive rates if its revenue gains exceed any likely costs. In addition, because the Three Benchmark test is ultimately a comparable rates test, BNSF can make it difficult for Montana complainant to bring a successful rate challenge through the simple expedient of imposing the same rates on all similar shippers in the State.

does argue that its rates are "reasonable," challenging its critics, because the size limit enables a claim of R/VC percentages below 180%.

Montana is aware that the Board is not charged with protecting privately-negotiated alternative dispute resolution arrangements. The fact that BNSF's 48-car shipment size limit undermines not just recourse to the STB, but also recourse for farm producers under the ADR agreement, is nevertheless relevant to this proceeding. To the extent that STB jurisdiction over unreasonable practices is, at least in part, tied to consideration of the public interest, and to the extent the Board favors private-sector dispute resolution, gaming that affects railroad-shipper relationships that exist alongside STB formal proceedings should be given evidentiary weight.

4. BNSF has Imposed Operating Inefficiencies on Mid-Sized Elevators

Where, as in Montana, a single railroad essentially dominates transportation of critical commodities, the railroad may use pricing and service to determine how producers of those commodities operate. This was demonstrated in the 1980s, when BNSF encouraged the construction of new elevators and expansion of existing elevators to handle 52-cars or more. Today, there may be even more efficient elevators in Montana, handling shuttle trains. It does not follow that BNSF should be able, with impunity, to impose shipment size limits that reduce the efficiencies or jeopardize the viability of mid-sized elevators developed at its request, and at significant cost.

BNSF has maintained (Oral Argument Transcript at 12) that 52-car elevators can still load 52-cars by combining a 48-car train with four single cars. Such a combination is not the same thing as a 52-car train, even in the unlikely event that a mid-sized elevator can order and obtain, at the same time, a 48-car unit and 4 single cars. See Whiteside V.S. at 10-11. Because there are no longer any rates applicable to 52-car trains, the elevator might have to ship using two (or more) bills of lading, and in any event it would have to pay higher single-car rates for the singles, over and above the 48-car rates that formerly applied to shipments of 52-109 cars.

If, as is more likely to happen, the single cars are not delivered with the 48 cars, these inefficiencies are compounded. As Witness Fauth points out (V.S. at 7-8), a mid-sized elevator that formerly shipped ten 52-car shipments per year (520 cars) may now have to ship the 520 cars in eleven shipments – ten 48-car shipments and 40 additional cars as single cars or 24-cars plus single car shipments – paying higher rates for the 40 cars.

In addition, there are handling and potential detention charges when 48 cars and 4 single cars are received at different times and combined at the elevator. Whiteside V.S. at 10-11. If the cars are not combined, single cars generally take more days in transit than trainloads. And while PNW grain elevators that are the destination for most grain shipments from mid-sized elevators do not object to shipments of 52 cars or more that formerly moved via BNSF and still move via Union Pacific (Whiteside V.S. at 7), those elevators may be less receptive to single car deliveries, given the extra handling involved.

It might be thought that BNSF would seek, for its own operational reasons, to minimize these inefficiencies, and continue to offer 52-car, or 48-109-car, rates. However, BNSF is able to minimize inefficiencies on its own system in two ways. [redacted] V.S. at 21. See also Whiteside V.S. at 7. Second, [redacted]. See Fauth V.S. at 13. Shuttle elevators, unlike mid-sized elevators, are not required to ship 48 cars and add single cars or 24 car lots moving at rates even higher than BNSFs 48-car rates. As a result, the operational and economic burdens of BNSF's 48-ar shipment size limit are borne almost entirely by mid-sized elevators.

C. BNSF's 48-Car Shipment Size Limit Is an Unreasonable Practice

Under all the circumstances, BNSF's shipment size limitation is antithetical to the interest of Montana elevators and producers, antithetical to the public interest, and inconsistent with STB policies and with the integrity of STB costing systems.

1. BNSF is Gaming the URCS Costing System

BNSF can be expected to argue that it imposed its 48-car limit because it believes grain shipments from mid-sized elevators are more like smaller shipments subject to the make-whole adjustment than they are like shuttle shipments.

Any such argument is unavailing for two reasons. First, as Witness Fauth shows, the premise is incorrect. Mid-sized elevator shipments, which used to be the most efficient grain shipments BNSF handles, remain efficient, and profitable. Fauth V.S. at 21-22. This is true if the shipments move in 52-car lots (or even 48-car lots, though the latter are less efficient). It is even more true if BNSF combines mid-sized grain trains into lots of 96 cars or more. [redacted]

Second, even if mid-sized elevator shipments were not as efficient and profitable as Witness Fauth has shown them to be, it is evasive and deceptive for BNSF to use shipment size limits to subject Montana's mid-sized elevator rates to the make-whole adjustment, and artificially reduced R/VC percentages.

BNSF evidently believes that the URCS dividing line should be at a point higher than the 50 cars or more cutoff in the STB's current rules. Fauth V.S. at 11. Assuming BNSF has a disagreement with those rules, the proper way to advocate its position is not to "game" the system but to ask the STB to change its URCS rules. In fact, the Board has expressed the desire to conduct, at some future date, a review of the current URCS rules.

However, BNSF elected instead to evade the current rules, and game the system, by arranging for the make-whole adjustment to apply to mid-sized elevator rates through imposition of its 48-car shipment size limitation. STB standards and STB procedures are undermined when monopoly railroads take self-serving steps to bypass the rules under which other railroads, shippers, and the Board itself generally operate, accomplishing indirectly what BNSF cannot lawfully do directly. Where, as here, the result is contrary to the public interest and serves only to permit a railroad with market power to deregulate its own rates and rate increases, corrective action is needed.

The deceptive nature of what BNSF has accomplished through its 48-car shipment size limit bears some resemblance to collections by railroads of fuel surcharges that either recover amounts in excess of the fuel costs they purport to reflect, or recover fuel costs that are also recovered in freight rates. These practices were found unreasonable in Rail Fuel Surcharges, STB Ex Parte No. 661, decision served January 26, 2007. The excessive surcharges found to be the result of unreasonable practices in that decision, like the rate increases subject to artificial R/VC reductions here, mislead shippers and are not readily subject to individual challenge without an unreasonable practice finding.

In its decision in Ex Parte No. 657 (Sub-No. 1), Major Issues in Rail Rate Cases, served October 30, 2006, aff'd sub nom. BNSF v. STB, 526 F.3rd 770 (D.C. Cir. 2008), the Board recognized the possibility of gaming under the percent reduction method that could allow captive shippers to "win" rate cases under the SAC test, but obtain little or no relief. Conversely, railroads could be found to be charging rates in excess of stand-alone cost, but come out with a favorable rate prescription which allowed retention of extremely high revenues. Decision at 10-16.

In many ways, BNSF's 48-car shipment size limit is even more objectionable, since it prevents shippers from even beginning rate cases, exposes shippers to unchallengeable rate increases, and has the other deleterious effects discussed above. Shippers who cannot even get in the "courthouse door," or who are misled into thinking their rates are non-jurisdictional due to artificial manipulation of R/VC percentages, have no chance of relief, and may even fail to consider a rate challenge.

In Major Issues, the Board said "We firmly believe that we must remove the 'gaming' temptation or possibility to protect the integrity of the rate dispute resolution process." STB decision at 16. A similar conclusion is appropriate here.

In contrast, a decision by the Board declining to take corrective action would largely render STB unreasonable practice jurisdiction ineffective. BNSF and other railroads would quickly see that they could deregulate and then raise their rates on grain and many other commodities moving in 50-60 car trains by the simple expedient of limiting the shipment sizes to 49-cars or less. The payoff in added revenues and reduced exposure to regulatory challenges would be high.

The technique pioneered by BNSF could end up artificially lowering enough R/VC percentages to distort STB regulatory and reporting systems keyed to R/VC percentages. As Witness Fauth explains (V.S. at 23), examples include the benchmarks underlying the Three Benchmark test and shippers' ability to develop comparison groups under that test (which is already difficult in Montana).

In discovery, Montana sought to determine whether BNSF had a "benign" operational rationale for its shipment size limitation. No support for any such rationale was forthcoming. Notably, the Board commented in Major Cases on the difficulty of assessing railroad motives, and decided to eliminate incentives for gaming despite railroad arguments about the absence of any evidence of gaming. Here the evidence is clear. [redacted]

D. The Board Should Order BNSF to Restore the 48-Car to 109-Car Rates It Formerly Maintained

Under the circumstances, the STB should find that BNSF is engaging in an unreasonable practice in violation of 49 U.S.C. Section 10702, by using its 48-car shipment size limit to produce URCS costing changes that deprive Montana grain shippers of any possibility of rate challenges. The Board should order BNSF to restore rates based on 48-109 cars, like those in BNSF tariffs prior to adoption of the challenged 48-car shipment size limit.

The Board should also direct BNSF to take related steps to make access to shipment sizes matching elevator capacity a reality. For example, [redacted][12] The Certificate of Transportation ("COT") program is BNSF's system for allocating empty rail cars, essentially auctioning off grain transportation capacity. See generally National Grain & Feed Ass'n v. United States, 5 F.3rd 306 (8th Cir. 1993). If BNSF were to modify its tariff to allow 48-109 car shipments but allowed COTS only for 48-car lots, its unreasonable practice would continue.

[12] BNSF Bates Nos. 22 and 81, attached hereto as Attachment B.

With restoration of these shipment sizes, mid-sized elevators will be in a position to operate more efficiently, consistent with the goals BNSF set when it induced construction of those elevators. They will also have a chance to challenge rate levels before the STB, and possibly negotiate rate reductions, or negotiate more moderation in BNSF rate increases, based on the possibility of a rate challenge.

Such relief from BNSF's unreasonable practices may or may not lead to rate relief. Any shipper considering a rate challenge will face all the usual obstacles. It will need to establish market dominance (BNSF market dominance in Montana is pervasive, but an evidentiary showing, with the costs and burdens that entails, will still be necessary). Montana shippers also face the daunting prospect of challenging a major railroad whose service is critical to the shipper's survival. To the extent that the shipper cannot afford a full-SAC challenge (and few mid-sized elevators can afford multi-million dollar litigation costs), the shipper will face excessively low relief caps, and, under Three Benchmark, the difficulty of identifying a comparison group with lower rates.

In the case of BNSF, potential complainants may also face the problem of BNSF's balance sheet being swollen by a write-up of more than $7 billion associated with the Berkshire Hathaway acquisition.[13] Fauth V.S. at 16.

Whether such obstacles can be overcome and rate relief can be obtained remains to be seen. What is clear now is that BNSF's 48-car shipment size limit is an unreasonable practice. BNSF has enough market power over grain shipments from mid-sized elevators in Montana. It does not need and should not be allowed to engineer for itself the additional leverage that comes

[13] Montana notes that the Western Coal Traffic League has urged the Board to institute a proceeding to address the BNSF acquisition premium issue. See WCTL's Petition filed May 2, 2011 in Docket No. 35506.

from eliminating any possibility of an STB rate challenge as to the grain rates of those elevators and their farm producer customers.

IV. CONCLUSION

For the foregoing reasons, the STB should order BNSF to cease and desist from the unreasonable practices challenged by the State of Montana, and should order corrective action as discussed herein.

Respectfully submitted,

Steve Bullock
Montana Attorney General
Chuck Munson
Assistant Attorney General
Montana Department of Justice
215 North Sanders
Helena, MT 59620
(406) 444-2026

John M. Cutler, Jr.
Andrew P. Goldstein
McCarthy, Sweeney & Harkaway, PC
Suite 700
1825 K Street, N.W.
Washington, DC 20006
(202) 775-5560

Attorneys for State of Montana

Dated: July 1, 2011

S:\mcd\Montana.docx

CERTIFICATE OF SERVICE

I hereby certify that I have, this first day of July, 2011, caused copies of this document to be served on counsel for Defendant BNSF by messenger delivery.

John M. Cutler, Jr.

REDACTED

REDACTED

REDACTED

REDACTED

REDACTED

Complainant's Exhibit No. 1

BEFORE THE

SURFACE TRANSPORTATION BOARD

DOCKET NO. 42124

THE STATE OF MONTANA

v.

BNSF RAILWAY COMPANY, ET AL.

VERIFIED STATEMENT OF

TERRY WHITESIDE

My name is Terry Whiteside. I am Principal of Whiteside and Associates, Suite 301, 3203 Third Avenue North, Billings, MT 59101 ("W&A"). W&A and its predecessors have provided analyses and transportation advice to various interests who promote the marketing of grains from Montana to surrounding states and for export. W&A represents and consults with state grain market development agencies, such as the Montana Wheat and Barley Committee and many other Wheat and/or Barley Commissions including those in the states of Colorado, Kansas, Idaho, Oklahoma, Nebraska, South Dakota, Texas and Washington, with associations of wheat and barley growers and merchandisers and with individual grain elevators. I have submitted statements to the STB in proceedings involving the transportation of grain on behalf of producer associations and state wheat boards or commissions in Montana, Kansas, Colorado, Idaho, Nebraska, Oklahoma, South Dakota, Texas and Washington, as well as the National Association of Wheat Growers.

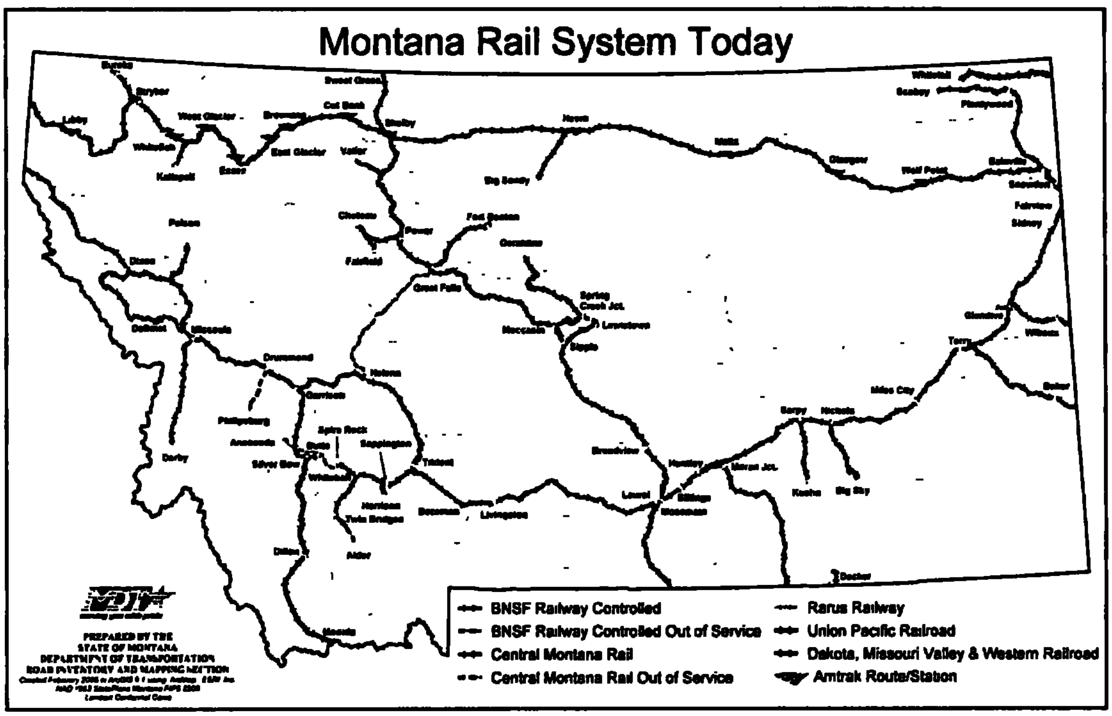
I am a 1970 graduate of Washington State University in Pullman, Washington, with my graduate work at the University of Tulsa, post-graduate work at the University of Wisconsin. I am a graduate of the College of Advanced Traffic. I am a registered practitioner at the Board and an Associate member of the American Society of Traffic and Transportation. I have worked in responsible positions for Class I common carriers, Fortune 500 companies and served as Administrator in the Montana Department of Agriculture Transportation Division prior to developing a private company. In my more than 40 years of agricultural consulting, I have acquired personal knowledge of grain elevator operations, including the interface of elevators with railroads.

I have been requested by the State of Montana to submit this Verified Statement on its behalf.

<u>Montana's Purpose in Bringing this Complaint</u>

Montana's economy is heavily dependent upon the production and marketing of grain, primarily winter and spring wheat. In 2010 Montana was third in the Nation in the production of wheat, second in the production of spring wheat, which is used primarily as a baking ingredient, second in the production of durum (made into pasta), fifth in the production of winter wheat and second in production of barley, which is utilized as an ingredient in beer production and as a feed stock. Because of economics that require the movement of a fungible, bulk commodity such as wheat in large capacity vehicles, such as railroad hopper cars, and the distances between Montana and its major markets (including primarily export positions in the Pacific Northwest or "PNW"), rail transportation is essential to the commercial success of Montana agriculture.

No state is more reliant on rail transportation for agricultural commodities than Montana, and Montana is more dominated by a single railroad – BNSF – than any other state in the union. The map below shows the Montana Rail System and depicts rail lines controlled by the BNSF in Montana.



<u>Development of the 26 and 52-Car Rate Structures on Rail Movements of Montana</u>

In the fall of 1980, the BN initiated and published several alternatives to single car rates including (a) 26 cars which could be loaded at two to four origins, (b) 26 cars from a single origin, and (c) 52 cars from a single origin. The first of these was offered for a limited time period as a means of encouraging grain public warehouses to make volume shipments. Under this rate structure, elevator operators located along a section of track serviced by the same local freight train could jointly arrange for the spotting of 26 covered hoppers at up to four different locations. Shippers would then be given a minimum time period within which to load out the cars, which would then be assembled into a train for movement to a single destination. The second alternative (26 cars from a single origin), had rates lower than single car rates. The 52 car rate structures became effective on December 1, 1980, with rates even lower than the 26-car rates.

These 26 and 52-car rates, especially those applicable to 52 cars, touched off a rash of investment in improved loading facilities and expanded sidings to achieve competitive advantage through the ability to load out unit trains of 52 cars or more. I recall from my own experience that Burlington Northern Railroad urged Montana elevators to expand to 52 cars because, should they fail to do so, they would find themselves unable to compete with cross country rivals expanding their loading capacity to 52 cars or more and using the lower 52-car rates.

Indeed, in the highly competitive world of grain marketing, the rate reductions represented by 52 cars versus 26 cars in 1980 (6 ¢/cwt or 3.6 cents/bushel) and single cars (26 ¢/cwt or 15.6 cents/bushel)[1] were intended to and did provide a compelling incentive for Montana elevators to invest tens of thousands of dollars in elevators to expand their facilities in order to load out 52-car trains. Elevators able to take advantage of lower rates could, if they chose, offer better prices to farmers and not only obtain the wheat necessary to fill out a 52-car train, but also attract wheat that otherwise would have been delivered by farmers to other elevators. These market incentives, in addition to BNSF's

1 Tariff rates subject to applicable rate adjustments.

verbal exhortations, resulted in the growth of widespread 52-car origin capacity in Montana.

Attached as Appendix A is the 1993 Burlington Northern Railroad Grain Elevator Directory, which shows all the Montana elevators served by Burlington Northern (a predecessor of BNSF), including carload capacities. In 1993, there were 116 Montana elevators served by BNSF. Forty-nine of those elevators had 52-car capacity. This illustrates how successful Burlington Northern was in compelling investments in 52-car elevators. Today, there are 27 (including Denton and Geraldine)[2] non-shuttle elevators that can ship 52 cars, but do not do so because BNSF has cancelled the 52-car rates. There are now 13 shuttle elevators (110 car capable) in Montana. Additionally there are 22 facilities that ship less than 52/48 car lots.

As discussed above, BNSF offered only single car wheat rates to the PNW until 1980, when it decided to promote the construction of elevator and track facilities capable of loading 26 or 52 cars at a single time. It retained that rate structure even after 2001, when it introduced 110-car wheat shuttle train rates to the PNW from Montana, preserving its 26 and 52-car rates to serve the mid-size elevators that had invested in those facilities.

BNSF's Montana shuttle program, with rates considerably lower than the 52-car rates, set off another race to see which elevators would be the first in their region to expand to 110-car capacity and which would follow. These steps undercut the investments that Montana elevators had made to accommodate 52-car trains.

---

[2] Denton and Geraldine are Central Montana Railroads origins and not listed in BNSF tariffs but are served via Moccasin CM.

In April 2008 BNSF published PNW wheat rates from Montana in 48-car to 109-car units at the same per-car level as the rates previously published for 52-109 cars. But in February 2009, it cancelled its rates from Montana for 52 cars and restricted mid-size elevators to 48-car shipments. See Tariff BNSF-4022-L, Item 43416, issued February 5, 2009, effective February 25, 2009, with a Start date of January 1, 2009. This reduction in train size imposed a substantial change on the costing and regulatory status of these mid-size BNSF trains and is the focus of this proceeding.[3]

As explained in more detail in the Verified Statement (V.S.) of Gerald W. Fauth, III, once a shipment drops below 50 cars, the STB's Uniform Rail Costing System ("URCS") rules require a "make whole" adjustment that results in a substantial drop in revenue/variable cost ratios. As Mr. Fauth points out, the BNSF rate for a 52 car shipment of wheat from Meriwether, MT to Portland, OR on BNSF in 2008 produced a revenue/variable cost ratio of 225%, whereas, all other things being equal, a 48-car shipment of wheat between those same points in 2008 produced a revenue/variable cost ratio of 163%. Fauth V.S. at 15, Table 3.

After the train sizes were changed, the per-car rates remained the same, but Mr. Fauth's V.S. shows that the R/VC ratios dropped by as much as 68 percentage points per shipment, removing the rates from where they might have been challenged as unreasonably high to the point where little or no challenge was jurisdictionally possible because in each case the revenue/variable cost ratio had been reduced to below 180% or very near 180%.[4]

---

3 A copy of the relevant tariff page is attached as Appendix B.

4 Mr. Fauth's V.S. shows the R/VC ratios attendant to BNSF's initial 48-car rates and how BNSF has used the deregulated R/VC zone created by those changes to impose

The State of Montana believes that the primary purpose behind BNSF's adjustment in its mid-size rates on wheat was to remove the possibility of a rate challenge aimed at its former 52-car wheat rates from Montana to the PNW, and to permit BNSF to raise its 48-car rates without realistic threat of challenge. Operationally, BNSF has made no changes to its Montana barley rates, which remain available in 52-car units to the PNW. Operationally, the same trains that haul 48 (or 52) cars of wheat over the mountains to the PNW can move 52 cars of barley over the same tracks. Facially, it is more efficient to handle 52-car units. In addition these mid-size units generally are "married" with other units of similar size, producing a 104-car rather than a 96-car train. [redacted] Fauth V.S. at 21-22.

I know of no operational or efficiency justification for BNSF's 48-car shipment size limit. There is clearly a market at the PNW for 52-car shipments, as evidenced by the fact that both UP and CP offer such rates.

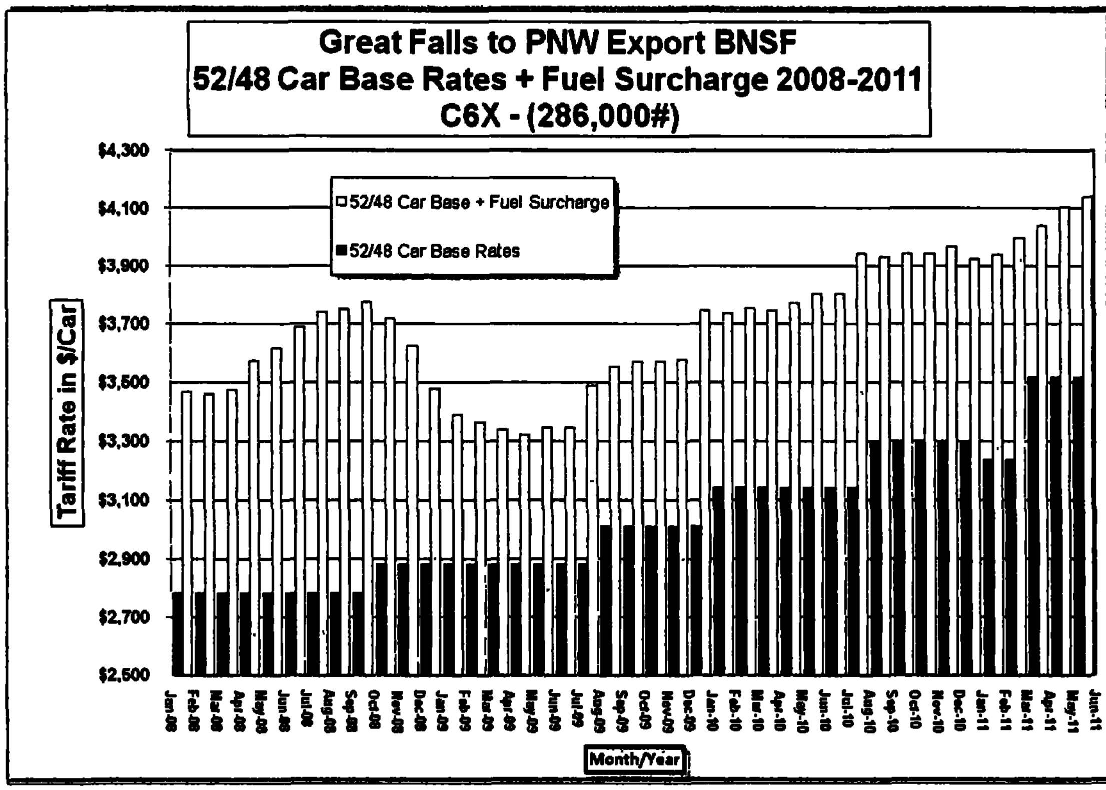
At a Domestic Policy Committee meeting (on February 8, 2009) of the National Association of Wheat Growers (NAWG attended by Witness Fauth and myself, the Montana Grain Growers ("MGGA") were presenting their Alternative Dispute Resolution (ADR) process with BNSF and their Montana R/VC analysis which was developed in support of the ADR . Gerald Fauth presented a discussion on URCS. BNSF repre-

---

rate increases that could have realistically been challenged if applicable to 52 cars but cannot be realistically challenged as 48-car rates even if the ratios are marginally over 180%. The maximum theoretical rate relief for rates marginally above 180% cannot economically justify the expenditure of $250,000 or more to bring the simplest of rate complaints, one under the Three-Benchmark rules.

sentatives were present including Kevin Kaufman, a senior official with responsibilities relating to transportation of agricultural commodities.

During this meeting, the 48-car versus 52-car issue came up. BNSF's Kevin Kaufman acknowledged that he was aware of the 50-car URCS default value and the resulting costing differences between 48-car and 52-car shipments. Indeed, during the exchange, he admitted that BNSF made the change from 52 to 48 cars because of this URCS issue. When it was pointed out to Mr. Kaufman that 52-car shipments continued to move under BNSF's 48-car minimum rates because the tariffs allowed 48-109 car shipments and that STB's URCS costing was based on the actual cars per shipment (e.g., 52-cars) and not the tariff minimum (i.e., 48-cars), Mr. Kaufman indicated that BNSF was in the process of changing operations to 48-car shipments. Indeed, at about the same time as the NAWG meeting, BNSF changed its rate publications from "48-car minimum" rates to "48-car" rates, which effectively excluded shipments ranging from 49 to 109 cars (including 52-car shipments) from moving under the published non-shuttle rates.



The graph above shows the history of Montana non-shuttle wheat rates 2008 to 2011 (multi-car) and illustrates the base rates for Montana Wheat Export shipments to the PNW from January 2008 to June 2011. As the graph shows, BNSF initiated increases in the base rates starting in October 2008 followed by continuing increases to present day.

As a result, and as explained in more detail in the Fauth V.S., rates for shipments in 48 cars were effectively or essentially deregulated. In many cases, the R/VC ratios were reduced by wide enough margins so that BNSF was able to impose significant increases in its 48-car rates in the two years following elimination of the 52-car rates, and those increases also remained literally or virtually immune from rate reasonableness challenge. Over that time span (January, 2008 to June, 2011), BNSF export wheat rates on 48-car shipments from Great Falls, MT to the PNW were increased by $736 per car or 26.5% (in 286,000 lb. cars) and $777 per car or 25.64% (in 268,000 lb. cars), not including fuel surcharges. Montana wheat shippers were left with a choice between unassailable 48-car rates and 110-car shuttle rates. Many Montana mid-size grain elevators were not equipped to utilize the 110 car shuttle rates because they had been constructed to handle 52-car shipments but not shipments of 110 cars.

BNSF has suggested earlier in this proceeding, in connection with its Motion to Dismiss that any shipper capable of making 48-car shipments can also make 52-car shipments by ordering a 48-car train and four single cars. That suggestion is economically and operationally infeasible.

First, the rate for a 48-car shipment from, for example, Great Falls, MT to the PNW is $3,517 per car. The rate for a single car shipment between the same two points is $3,916 per car. BNSF Tariff 4022-M, Item 43604, effective March 1, 2011. In addition, single cars generally have longer transit times than trainloads.

Second, it is not practicable for a shipper to expect reliable placement of an empty 48-car train and four empty singles at the same time. I know from my personal interchanges with Montana grain elevators that car orders often are not entirely filled on specified "want" dates. It would be unrealistic to expect a 48-car train and four single cars requested for placement on a specific date to all be placed on the same date. Once the 48-car train is placed, it must be loaded within 48 hours. If it is not, demurrage is assessed at a rate of $75 per car per day. A shipper cannot hold a 48-car train until four additional cars are delivered. If the reverse is true, that is, if four single cars are delivered before the 48-car train, the shipper cannot afford to hold four single cars without paying demurrage of $75 per car per day.

Thus, unless all 52 cars are delivered for loading by BNSF at the same time, demurrage costs make it impossible to hold one group of cars awaiting placement of the other group. And, as I just pointed out, even if all 52 cars are placed for loading on the same day, the average rate per car will be driven up by the single-car rate so as to make the cost of shipping under those circumstances non-competitive.

BNSF produced documents in discovery authored by [redacted]" BNSF Bates No. 782.[5] Stupid or not, BNSF and shippers are obliged to utilize the URCS rules for determining shipment costs. It is one thing for BNSF to "game" the URCS system by adjusting shipment sizes to take advantage of the make-whole adjustment, but shippers do not have the same latitude. If they are faced with legitimate 48-car rates, they cannot escape the consequences of those rates by publishing a 52-car tariff or attempting to make 52-car shipments. Only the railroad can manipulate shipment sizes to take advantage of the make-whole adjustment and drive down R/VC ratios that bring about de facto deregulation of wheat rates and rate increases for mid-size elevators.

As pointed out elsewhere, 52-car elevators and 52-car shipments were brought into being by BNSF's predecessor and continued to play an active role in the movement of wheat from Montana to the PNW until undercut by the 48-car rates which brought about an intended underutilization of 52-car elevator investments. As the numbers set forth previously show, 52-car elevators are now in decline as a result of BNSF's gamesmanship.

---

[5] See also BNSF Bates No. 780, where Mr. Kaufman said [redacted]

Fifty-two car elevators are not only important to Montana as a source of wheat traffic, but also for other commodities that cannot move in quantities large enough to fill shuttle trains or train units much in excess of 52 cars. As illustrated on Appendix GWF-5 to the Fauth V.S., Montana ships a variety of commodities other than wheat from 52-car origins; namely, barley, oilseeds, beans, peas, lentils and cowpeas. In 2009, Montana's 52-car elevators shipped over [redacted] cars of these diverse commodities, or nearly [redacted] of all shipments made from Montana's 52-car elevators.

Some of these crops are known as rotational crops, because they are planted by farmers who may not wish to consume excess nutrients from the soil by planting wheat year after year, or alternatively may want to replenish their nitrogen or other nutrients in the soil. These elevators provide the market for these rotational crops. If deprived of the ability to ship these rotational crops in the most economical manner possible, which means from a nearby, low-cost 52-car elevator, and if farmers also lose the ability to use those elevators for export wheat shipments, the elevators gradually will fail and Montana farmers will face serious limitations on their ability to utilize their lands wisely and profitably.

Sometimes railroads act from legitimate economic self-interest, but often their actions shape the lives and fortunes of farmers and others. Manipulation of the URCS costing system by imposing a 48-car limit on wheat shipments from elevators designed at BNSF's behest to load 52-cars not only harms Montana's ability to market wheat, but to market other crops as well. It will also not allow for the maintenance of an elevator structure that includes mid-size elevators. Those elevators are now even more likely to give way to nothing but shuttle elevators.

S:\mcd\Whiteside V.S. Final Public Version Redacted.doc

VERIFICATION

The foregoing statement is true and accurate to the best of my belief and knowledge.

Terry C. Whiteside

Terry C. Whiteside

Subscribed and sworn to before me this 28 day of June 2011.

JONI SEELEY
NOTARIAL SEAL
STATE OF MONTANA

JONI SEELEY
NOTARY PUBLIC for the
State of Montana
Residing at Billings, Montana
My Commission Expires
November 17, 2012

Joni Seeley

Notary Public

My commission expires: 11-16-12

1993
GRAIN ELEVATOR DIRECTORY

Produced and Published by
Burlington Northern Railroad
Agricultural Commodities Unit
Ft. Worth, Texas

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME			CAPACITY(BU.)	CLDS
Bainville 01075/08995.00 Roosevelt Elev No. 500	CB & F Bainville **** Bainville (406) 769-2341	 MT 59212	 Cert Scales/H D/BN W1 W2 W4 BR OT	180,000	8
Baker 08615/03202.95 Fallon Elev No. 501	Baker Grain, Inc. P. O. Box 693 Baker (406) 778-2511	 MT 59313	 D/BN W1 W2	85,000	13
Baker 08615/03202.95 Fallon Elev No. 502	Equity Coop Assn. P. O. Box 488 Baker (406) 778-2226	 MT 59313-0488	 D/BN W2 W1 BR OT CR	450,000	18
Belgrade 30991/10145.00 Gallatin Elev No. 503	Gallatin Independent Grain Producer 100 South Broadway Belgrade (406) 388-3442 [388-3453]	 MT 59714	 Cert Scales/H D/MRL BR OT W1 W2 WG	194,000	5
Big Sandy 11032/09335.00 Chouteau Elev No. 504	Centennial Mills, Inc. / Div. of ADM P. O. Box 577 Big Sandy (406) 378-2121 [378-2126]	 MT 59520-0577	 D/BN W2 W1 BR	290,000	52
Big Sandy 11032/09335.00 Chouteau Elev No. 505	General Mills, Inc. P. O. Box 412 Big Sandy (406) 378-2105	 MT 59520	 Cert Scales/H D/BN W2 W1 BR TR OT	327,000	52
Big Timber 30921/10020.00 Sweet Grass Elev No. 506	Eagle Brokerage/Eagle IBT 3203 Third Ave.So, STE 301 Billings (406) 245-5132 [245-3778]	 MT 59101	 Cert Scales/T D/MRL CR BR OT W1 W2	7,000	10
Big Timber 30921/10020.00 Sweet Grass Elev No. 507	K-W Feed & Grain 127 East Yellowstone Ave. Big Timber (406) 932-5132	 MT 59011	 D/MRL W2 W1 BR OT CR	42,000	3
Billings 30841/08545.00 Yellowstone Elev No. 508	Billings Grain Terminal P. O. Box 31775 Billings (406) 245-7575	 MT 59107	 D/MRL W2 W1 BR	1,700,000	52
Billings 30841/08545.00 Yellowstone Elev No. 509	Cereal Food Processors, Inc. 3601 1st Ave.S Billings (406) 245-3131 [245-2542]	 MT 59107	 D/MRL W1 W2	310,000	5

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME		CAPACITY(BU.)	CLDS
Box Elder 11021/09330.00 Hill Elev No. 510	General Mills, Inc. P. O. Box 5022 Great Falls MT 59403 (406) 761-6252 [727-8096]	D/BN W2 W1 BR	241,000	52
Bozeman 30981/10140.00 Gallatin Elev No. 511	Ag Depot, Inc. P. O. Box 1349 Bozeman MT 59715 (406) 586-5890	Cert Scales/H D/MRL W3 W1 W2 BR OT	90,000	2
Bozeman 30981/10140.00 Gallatin Elev No. 512	B. G. Grain Co. 712 East Mendenhall Bozeman MT 59715 (406) 586-2474	Cert Scales/H D/MRL BR	30,000	5
Brady 32830/08930.00 Pondera Elev No. 513	Great Western Malting P. O. Box 146 Brady MT 59416 (406) 753-2520 [753-2267]	D/BN BR	142,000	5
Brady 32830/08930.00 Pondera Elev No. 514	Triangle Terminal Coop Assn. P. O. Box 185 Brady MT 59416 (406) 753-2241	D/BN W1 W2 BR W4 W0	482,000	14
Broadview 32590/08835.00 Yellowstone Elev No. 515	General Mills, Inc. P. O. Box 135 Broadview MT 59015 (406) 667-2315	Cert Scales/H D/BN W2 W1 BR	100,000	52
Broadview 32590/08835.00 Yellowstone Elev No. 516	Harvest States Cooperatives P. O. Box 138 Broadview MT 59015 (406) 667-2316 [667-2397]	D/BN W2 W1 BR OT	182,000	52
Brockton 01108/09115.00 Roosevelt Elev No. 517	Farmers Elevator Co. P. O. Box 18 Brockton MT 59213 (406) 786-3221	D/BN W1 W2 BR RY OT	160,000	11
Carter 11090/09380.00 Chouteau Elev No. 518	General Mills, Inc. P. O. Box 156 Carter MT 59420-0156 (406) 734-5336 [734-5905]	Cert Scales/H D/BN W2 W1 BR	474,000	52
Carter 11090/09380.00 Chouteau Elev No. 519	Peavey Co. P. O. Box 1510 Kearney NE 68848 (308) 237-5914 [237-5910]	D/BN W1 W2 BR	605,000	52

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME		CAPACITY(BU.)	CLDS
Cascade 11148/09420.00 Cascade Elev No. 520	Cascade Elevators P. O. Box 387 Cascade MT 59421 (406) 468-2812	D/BN W2 W1 BR	149,000	4
Chester 01407/09530.00 Liberty Elev No. 521	Harvest States Cooperatives P. O. Box 158 Chester MT 59522 (406) 759-5145 [759-5199]	D/BN W1 W2 BR	421,000	52
Chinook 01324/09310.00 Blaine Elev No. 522	Columbia Grain International, Inc. P. O. Box 338 Chinook MT 59523 (406) 357-2360	D/BN W1 W2 BR TR OT	750,000	52
Chinook 01324/09310.00 Blaine Elev No. 523	Harvest States Cooperatives P. O. Box 427 Chinook MT 59523 (406) 357-2284 [357-2285]	D/BN BR OT	165,000	4
Choteau 61529/08890.00 Teton Elev No. 524	General Mills, Inc. P. O. Box 170 Choteau MT 59422-0170 (406) 466-5371 [466-2227]	Cert Scales/H D/BN W4 RS	460,000	52
Circle 85952/08275.00 Mc Cone Elev No. 525	Farmers Elevator Co. P. O. Box B Circle MT 59215 (406) 485-3313	Cert Scales/H D/BN W1 W2 BR OT W4	560,000	52
Columbus 30880/10000.00 Stillwater Elev No. 526	Harvest States Cooperatives P. O. Box 355 Columbus MT 59019 (406) 322-5713	Cert Scales/H D/MRL W2 W1 BR OT CR	105,000	25
Conrad 32843/08940.00 Pondera Elev No. 527	Columbia Grain International, Inc. P. O. Box 907 Conrad MT 59425 (406) 278-3256 [278-7718]	Cert Scales/H D/BN W1 W2 BR W4	738,000	52
Conrad 32843/08940.00 Pondera Elev No. 528	General Mills, Inc. P. O. Box 1516 Conrad MT 59425 (406) 278-7532 [278-5479]	Cert Scales/H D/BN W1 W2 BR	500,000	52
Culbertson 01089/09100.00 Roosevelt Elev No. 529	Farmers Elevator of Culbertson P. O. Box 417 Culbertson MT 59218 (406) 787-5342	D/BN W1 W2 BR OT CR	225,000	10

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME		CAPACITY(BU.)	CLDS
Cut Bank 01475/09595.00 Glacier Elev No. 530	General Mills, Inc. 105 East Railroad Street Cut Bank MT 59427 (406) 873-5061 [873-2662]	Cert Scales/H D/BN W1 W2 BR OT W4	458,000	52
Cut Bank 01475/09595.00 Glacier Elev No. 531	Harvest States Cooperatives P. O. Box 1272 Cut Bank MT 59427 (406) 873-4642	D/BN W1 W2 BR OT CR	600,000	52
Devon 01432/09550.00 Toole Elev No. 532	Westermark Grain Corp. P. O. Box 609 Shelby MT 59474 (406) 432-2405	Cert Scales/H D/BN W1 W2 BR	330,000	16
Dunkirk 01441/09560.00 Toole Elev No. 533	Westermark Grain Corp. P. O. Box 609 Shelby MT 59474-0609 (406) 432-2405	Cert Scales/H D/BN W1 W2 BR	155,000	3
Dutton 32813/08915.00 Teton Elev No. 534	Dutton Farmers Elevator Co. P. O. Box 417 Dutton MT 59433-0417 (406) 476-3421	D/BN W2 BR W1 W4	260,000	13
Dutton 32813/08915.00 Teton Elev No. 535	Triangle Terminal Coop Assn. P. O. Box 237 Dutton MT 59433 (406) 476-3450 [476-3450]	D/BN W1 W2 W4 W0 BR	700,000	52
Fairfield 61585/08891.00 Teton Elev No. 536	Busch Agri Resources, Inc. P. O. Box 697 Fairfield MT 59436 (406) 467-2440 [467-3498]	D/BN BR	1,100,000	75
Fairfield 61585/08891.00 Teton Elev No. 537	Busch Agri Resources, Inc. P. O. Box 697 Fairfield MT 59436 (406) 467-2521	Cert Scales/T D/BN BR	1,200,000	52
Fallon 03678/08300.00 Prairie Elev No. 538	Harvest States Cooperatives P. O. Box 187 Fallon MT 59326 (406) 486-5430	D/BN W2 W1 CR BR	119,000	26
Fort Benton 11075/09395.00 Chouteau Elev No. 539	General Mills, Inc. P. O. Box 1347 Fort Benton MT 59442 (406) 622-5434 [622-3872]	(2 units) Cert Scales/H D/BN W2 BR W1 WG OT	886,000	52

BURLINGTON NORTHERN RAILROAD

ıCATION	ELEVATOR NAME		CAPACITY(BU.)	CLDS
ıld 59018/09010.00 Roosevelt Elev No. 540	Farmers Elevator Co. of Froid P. O. Box 157 Froid MT 59226 (406) 766-2312	D/BN W1 W2 W4 BR RY	250,000	5
old 59018/09010.00 Roosevelt Elev No. 541	Harvest States Cooperatives P. O. Box 106 Froid MT 59226 (406) 766-2335	D/BN W1 W2 BR W4	135,000	8
'omberg 32528/20815.00 Carbon Elev No. 542	Busch Agri Resources, Inc. P. O. Box 1194 Powell WY 82435-1194 (307) 754-9539	D/BN BR	130,000	15
ieyser 32724/08745.00 JudithBasin Elev No. 543	Geyser Elevator, Inc. P. O. Box 127 Geyser MT 59447 (406) 735-4302	Cert Scales/H D/BN W2 W1 BR OT	27,000	5
Gildford 01375/09495.00 Hill Elev No. 544	General Mills, Inc. P. O. Box 155 Gildford MT 59525 (406) 376-3281	Cert Scales/H D/BN W2 W1 BR	360,000	52
Glasgow 01192/09175.00 Valley Elev No. 545	Harvest States Cooperatives P. O. Box 427 Glasgow MT 59230 (406) 228-4422 [228-8286]	Cert Scales/H D/BN W1 W2 BR W4 SS	370,000	52
Glasgow 01192/09175.00 Valley Elev No. 546	Valco Agri Services, Inc. P. O. Box 1299 Glasgow MT 59230 (406) 228-8291	Cert Scales/H D/BN W2 BR W1 OT W0	93,500	3
Glendive 03649/08200.00 Dawson Elev No. 547	Grain Growers, Inc. P. O. Box 1088 Glendive MT 59330 (406) 365-8311 [365-9810]	D/BN W1 W2 BR OT W4	400,000	52
Glendive 03649/08200.00 Dawson Elev No. 548	Harvest States Cooperatives P. O. Box 1131 Glendive MT 59330-1131 (406) 365-5241 [365-6418]	D/BN W2 W1 BR OT CR	232,000	3
Great Falls 32777/08800.00 Cascade Elev No. 549	Columbia Grain International, Inc. P. O. Box 1969 Great Falls MT 59403 (406) 453-6506	Cert Scales/H D/BN W2 W1 BR W4 WG	420,000	52

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME			CAPACITY(BU.)	CLDS
Great Falls 32777/08800.00 Cascade Elev No. 550	Columbia Grain International, Inc. P. O. Box 1969 Great Falls (406) 453-6506	 MT 59403	 D/BN BR W2 W1 W4	112,000	9
Great Falls 32777/08800.00 Cascade Elev No. 551	General Mills, Inc. P. O. Box 5022 Great Falls (406) 761-6252	 MT 59403	 Cert Scales/H D/BN BR W1 W2 W3 W4	1,590,000	52
Great Falls 32777/08800.00 Cascade Elev No. 552	Harvest States Cooperatives P. O. Box 671 Great Falls (406) 453-0631	 MT 59403	 D/BN W2 BR W1 W4 OT	688,000	52
Great Falls 32777/08800.00 Cascade Elev No. 553	Koch Agri Services P. O. Box 2208 Great Falls (406) 761-2338 [761-7926]	 MT 59403	 D/BN BR W1 W2 FX RS	412,000	30
Hamilton 87549/10740.00 Ravalli Elev No. 554	Lake Milling, Inc. 110 Mill Street Hamilton (406) 363-2334	 MT 59840	 D/MRL BR CR OT W0 WG	49,000	3
Hardin 30782/21285.00 Big Horn Elev No. 555	Bowman Grain & Seed, Inc. Drawer I Hardin (406) 665-3403	 MT 59034	 D/BN W1 W2 BR	355,000	52
Hardin 30782/21285.00 Big Horn Elev No. 556	Campbell Farming Corp. P. O. Box K Hardin (406) 665-1205	 MT 59034	 Cert Scales/H D/BN W2 W1 BR	230,000	52
Hardin 30782/21285.00 Big Horn Elev No. 557	Hardin Elevator Box K Hardin (406) 665-2450	 MT 59034	 Cert Scales/H D/BN W2 W1 BR	298,000	26
Harlem 01303/09280.00 Blaine Elev No. 558	Columbia Grain International, Inc. P. O. Box 577 Harlem (406) 353-2924	 MT 59526	 Cert Scales/H D/BN W1 W2 BR	250,000	52
Harlem 01303/09280.00 Blaine Elev No. 559	Equity Coop Assn. P. O. Box 549 Harlem (406) 353-2218	 MT 59526	 D/BN W1 W2 BR OT	70,000	4

BURLINGTON NORTHERN RAILROAD

.OCATION	ELEVATOR NAME		CAPACITY(BU.)	CLDS
larrison 87110/10410.00 Madison Elev No. 560	Harrison Elevator P. O. Box 85 Harrison MT 59735 (406) 685-3429	D/MRL W2 BR W1 OT	133,000	18
Havre 01345/09320.00 Hill Elev No. 561	Centennial Mills, Inc. / Div. of ADM P. O. Box 1427 Havre MT 59501 (406) 265-2208	D/BN W2 W1 BR	511,000	52
Havre 01345/09320.00 Hill Elev No. 562	Farmers Grain Exchange 701 1ST ST., P. O. Box 990 Havre MT 59501 (406) 265-2275	D/BN W1 W2 BR OT CR	750,000	10
Havre 01345/09320.00 Hill Elev No. 563	General Mills, Inc. P. O. Box 1208 Havre MT 59501 (406) 265-5451 [265-5452]	Cert Scales/H D/BN W1 W2 BR OT W4	450,000	52
Helena 31079/10250.00 Lewis & Clark Elev No. 564	Agri Feeds & Fertilizer, Inc. 1518 Dodge Avenue Helena MT 59601 (406) 442-7806	Cert Scales/H D/MRL BR OT W2 W1	24,000	6
Hingham 01381/09500.00 Hill Elev No. 565	General Mills, Inc. P. O. Box 208 Hingham MT 59528 (406) 397-3224	D/BN W2 W1 W4 BR	750,000	52
Hinsdale 01219/08195.00 Valley Elev No. 566	Harvest States Cooperatives P. O. Box 55 Glasgow MT 59230 (406) 364-2343	D/BN W1 W2 BR	40,000	4
Huntley 30829/08525.00 Yellowstone Elev No. 567	Coors Brewing Co. P. O. Box 188 Huntley MT 59037 (406) 348-3786 [348-2386]	D/MRL BR	2,700,000	10
Huntley 30829/08525.00 Yellowstone Elev No. 568	Harvest States Cooperatives P. O. Box 87 Huntley MT 59037 (406) 348-3816	Cert Scales/H D/MRL W2 W1 BR OT CR	120,000	5
Ismay 08644/03203.20 Custer Elev No. 569	Ismay Grain P. O. Box 236 Ismay MT 59336-0236 (406) 772-5743	D/BN W1 W2 BR CR	350,000	13

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME		CAPACITY(BU.)	CLDS
Joplin 01397/09520.00 Liberty Elev No. 570	**General Mills, Inc.** P. O. Box 192 Joplin MT 59531 (406) 292-3258 [292-3861]	Cert Scales/T D/BN W1 W2 W4 BR OT	540,000	52
Kalispell 61617/09720.00 Flathead Elev No. 571	**Equity Supply Co.** P. O. Box 579 Kalispell MT 59901 (406) 755-7400 [755-3542]	D/BN BR WG W1 W2 OT	660,000	2
Kalispell 61617/09720.00 Flathead Elev No. 572	**Swallow Grain Service** P. O. Box 5276 Kalispell MT 59903 (406) 752-2394	Cert Scales/T D/BN W0 BR	100,000	3
Kershaw 11080/09390.00 Chouteau Elev No. 573	**United Grain Corp.** P. O. Box 817 Fort Benton MT 59442 (406) 622-5421	D/BN W2 W1 BR	550,000	52
Kremlin 01365/09490.00 Hill Elev No. 574	**General Mills, Inc.** P. O. Box 155 Gildford MT 59525 (406) 376-3281	D/BN W2 W1 BR	198,000	12
Laurel 30855/08585.00 Yellowstone Elev No. 575	**Hageman Elevator, Inc.** P. O. Box 265 Laurel MT 59044 (406) 628-4818	Cert Scales/H D/MRL W2 W1 BR CR OT	220,000	10
Lewistown 61331/08720.00 Fergus Elev No. 576	**Agri Basics** P. O. Box 774 Lewistown MT 59457 (406) 538-8751	Cert Scales/H D/BN BR OT	122,000	4
Lewistown 61331/08720.00 Fergus Elev No. 577	**Harvest States Cooperatives** P. O. Box 933 Lewistown MT 59457 (406) 538-5371 [538-5967]	Cert Scales/H D/BN W2 W1 BR W4 OT	500,000	52
Lindsay 85924/08260.00 Dawson Elev No. 578	**Farmers Elevator Co.** P. O. Box 195 Lindsay MT 59339 (406) 584-7565	D/BN W1 W2 BR	320,000	12
Livingston 30956/10065.00 Park Elev No. 579	**Agri Needs Co.** P. O. Box 622 Livingston MT 59047 (406) 222-0332 [222-7544]	Cert Scales/H D/MRL W2 BR W1 W3 WG	85,000	3

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME			CAPACITY(BU.)	CLDS
Ludington	Roughrider Company			220,000	52
59216/08110.00	P. O. Box 363		Cert Scales/H		
Richland	Fairview	MT 59221	D/BN		
Elev No. 580	(406) 747-5238 [747-3530]		W1 W2 BR OT		
Macon	United Grain Corp.			550,000	52
01138/09135.00	P. O. Box 918		Cert Scales/H		
Roosevelt	Wolf Point	MT 59201	D/BN		
Elev No. 581	(406) 525-3231		W1 W2 BR W4 RS		
Malta	Equity Coop Assn.			200,000	10
01259/09250.00	P. O. Box 340				
Phillips	Malta	MT 59538	D/BN		
Elev No. 582	(406) 654-2240		W1 W2 BR OT		
Malta	Quality Feed & Supply			125,000	5
01259/09250.00	515 S. Fifth Street East				
Phillips	Malta	MT 59538	D/BN		
Elev No. 583	(406) 654-1530		W1 BR W2		
Medicine Lake	Harvest States Cooperatives			115,000	8
59030/09020.00	P. O. Box 165				
Sheridan	Medicine Lake	MT 59247	D/BN		
Elev No. 584	(406) 789-2222		W1 W2 W4 BR		
Meriwether	Montana Wheat Growers, Inc.			590,000	26
01495/09615.00	P. O. Box 2206		Cert Scales/H		
Glacier	Cut Bank	MT 59427	D/BN		
Elev No. 585	(406) 338-5307		BR OT W0 W1 W2		
Miles City	Peavey Co.			639,000	52
03727/08345.00	714 Phillips				
Custer	Miles City	MT 59301	D/BN		
Elev No. 586	(406) 232-6820 [232-6869]		W2 W1 BR		
Moccasin	General Mills, Inc.			436,000	52
32688/08680.00	***		Cert Scales/H		
JudithBasin	Moccasin	MT 59462	D/BN		
Elev No. 587	(406) 423-5481		W1 W2 BR OT W4		
Moore	Peavey Co.			1,000,000	52
81368/08724.00	P. O. Box 61				
Fergus	Moore	MT 59464	D/BN		
Elev No. 588	(406) 374-2526 [374-2262]		W1 W2 BR		
Nashua	Harvest States Cooperatives			240,000	8
01179/09165.00	P. O. Box 48				
Valley	Nashua	MT 59248	D/BN		
Elev No. 589	(406) 746-3381		W1 W2 W4 BR OT		

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME			CAPACITY(BU.)	CLDS
Nashua	Valco Agri Services, Inc.			110,000	2
01179/09165.00	P. O. Box 129				
Valley	Glasgow	MT 59230	D/BN		
Elev No. 590	(406) 228-8291		W1 W2 BR OT		
Pablo	Westland Seed Inc.			100,000	3
87825/11030.00	1308 Round Butte Road West				
Lake	Ronan	MT 59864	D/MRL		
Elev No. 591	(406) 676-4100 [676-4101]		W2 BR OT W1 WG		
Plains	Plains Feed & Grain, Inc.			48,000	1
31275/11070.00	P. O. Box 805				
Sanders	Plains	MT 59859	D/MRL		
Elev No. 592	(406) 826-3621		WG BR RS OT W1		
Plentywood	Ag Grain, Inc.			409,000	52
59052/09035.00	225 E. Northern Ave., Box 331		Cert Scales/H		
Sheridan	Plentywood	MT 59254	D/BN		
Elev No. 593	(406) 765-1771 [765-1771]		W4 W1 BR W2 OT		
Plentywood	Columbia Grain International, Inc.			675,000	52
59052/09035.00	P. O. Box 547		Cert Scales/H		
Sheridan	Plentywood	MT 59254	D/BN		
Elev No. 594	(406) 765-2150		W1 W4 BR W2		
Poplar	Columbia Grain International, Inc.			370,000	25
01122/09125.00	P. O. Box 608				
Roosevelt	Poplar	MT 59255	D/BN		
Elev No. 595	(406) 768-3442 [768-5295]		W1 W2 W4 BR		
Poplar	Farmers Elevator Co.			175,000	6
01122/09125.00	P. O. Box 28				
Roosevelt	Wolf Point	MT 59201	D/BN		
Elev No. 596	(406) 768-3352		W1 W2 BR OT RY		
Power	Harvest States Cooperatives			155,000	7
32802/08825.00	P. O. Box 178		Cert Scales/H		
Teton	Power	MT 59468	D/BN		
Elev No. 597	(406) 463-2215		W2 W1 BR		
Redstone	Redstone Grain Co.			135,000	8
59072/09045.00	P. O. Box 41				
Sheridan	Redstone	MT 59257	D/BN		
Elev No. 598	(406) 895-2557		W4 W1 W2 BR RY		
Reserve	Columbia Grain International, Inc.			140,000	5
59038/09025.00	P. O. Box 547				
Sheridan	Great Falls	MT 59254	D/BN		
Elev No. 599	(406) 765-2150		W1 W4 BR		

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME		CAPACITY(BU.)	CLDS
serve 59038/09025.00 Sheridan Elev No. 600	Prairie States Coop P. O. Box 98 Reserve MT 59258 (406) 286-5266	D/BN BR OT W1 W2 W4	130,000	10
nan 87820/11025.00 Lake Elev No. 601	Ronan Feed & Grain Co. P. O. Box 138 Ronan MT 59864 (406) 676-3311	D/MRL BR OT W3 W1 W2	100,000	2
onan 87820/11025.00 Lake Elev No. 602	Westland Seed Inc. 1308 Round Butte Road West Ronan MT 59864 (406) 676-4100 [676-4101]	D/MRL BR OT W1 WG	188,000	4
udyard 01387/09510.00 Hill Elev No. 603	Columbia Grain International, Inc. P. O. Box 291 Rudyard MT 59540 (406) 355-4316	Cert Scales/H D/BN W1 W2 BR W4	2,000,000	52
udyard 01387/09510.00 Hill Elev No. 604	Harvest States Cooperatives P. O. Box 149 Rudyard MT 59540 (406) 355-4298 [355-4399]	Cert Scales/H D/BN W1 W2 BR W4	700,000	52
aco 01232/09200.00 Phillips Elev No. 605	Saco Dehy, Inc. P. O. Box 288 Saco MT 59261 (406) 527-3266	D/BN BR OT W1 W2 CR	180,000	6
icobey 59097/09070.00 Daniels Elev No. 606	Harvest States Cooperatives P. O. Box 158 Scobey MT 59263 (406) 487-2271 [487-2272]	D/BN W1 W2 W4 BR	500,000	52
icobey 59097/09070.00 Daniels Elev No. 607	Nash Brothers, Inc. Feed & Grain P. O. Box 405 Scobey MT 59263 (406) 487-5354	Cert Scales/H D/BN W1 BR OT RY	203,000	4
ihelby 01451/09562.00 Toole Elev No. 608	Harvest States Cooperatives P. O. Box 849 Shelby MT 59474 (406) 434-5225 [434-7215]	Cert Scales/H D/BN W0 BR OT RS	890,000	52
ihelby 01451/09562.00 Toole Elev No. 609	Peavey Co. P. O. Box 876 Shelby MT 59474 (406) 434-2107 [434-2508]	D/BN W1 W2 BR W4	2,000,000	52

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME		CAPACITY(BU.)	CLDS
Sidney 59225/08120.00 Richland Elev No. 610	Agri Basics Co. 904 East Main Sidney MT 59270 (406) 482-1309 [482-2251]	Cert Scales/H D/BN W1 W2 BR OT CR	166,000	6
Sidney 59225/08120.00 Richland Elev No. 611	Nortana Grain Co. 415 - 9TH Avenue N. E. Sidney MT 59270 (406) 482-3014	D/BN W1 W2 BR OT	400,000	52
Sidney 59225/08120.00 Richland Elev No. 612	Roughrider Company P. O. Box 363 Fairview MT 59221 (406) 747-5236 [747-3530]	D/BN W1 W2 BR OT	395,000	10
Sprole 01116/09120.00 Roosevelt Elev No. 613	United Grain Corp. P. O. Box 918 Wolf Point MT 59201 (406) 525-3231	D/BN BR W1 W2 W4	146,000	5
Stanford 32707/08735.00 Judith Basin Elev No. 614	General Mills, Inc. P. O. Box 100 Stanford MT 59479 (406) 566-2282	D/BN W2 BR W1 WG RS	530,000	52
Stevensville 87530/10700.00 Ravalli Elev No. 615	Stevensville Feed & Fuel 407 Main Street Stevensville MT 59870 (406) 777-5527	D/MRL CR BR WG W2 OT	10,000	6
Sunburst 61228/09575.00 Toole Elev No. 616	Harvest States Cooperatives P. O. Box 95 Sunburst MT 59482-0095 (406) 937-3421	D/BN W1 BR W2 W4 OT	115,000	5
Sunburst 61228/09575.00 Toole Elev No. 617	Sunburst Seed/ Transload Services P. O. Box 99 Sunburst MT 59482 (406) 937-6490	Cert Scales/H D/BN SS FX RS MT	280,000	6
Sweetgrass 61236/09520.00 Toole Elev No. 618	Nagy Elevator P. O. Box 89 Sweetgrass MT 59484 (406) 335-2321 [335-2327]	D/BN BR RS	90,000	15
Three Forks 86906/10335.00 Gallatin Elev No. 619	Harvest States Cooperatives P. O. Box 205 Three Forks MT 59752 (406) 285-3231	Cert Scales/H D/MRL CR WG W1 W2 BR	348,000	4

BURLINGTON NORTHERN RAILROAD

LOCATION	ELEVATOR NAME		CAPACITY(BU.)	CLDS
Tiber 01413/09535.00 Liberty Elev No. 620	General Mills, Inc. P. O. Box 157 Chester MT 59522 (406) 759-5146 [759-5438]	Cert Scales/T D/BN W2 W1 BR W4	540,000	52
Toston 31035/10210.00 Broadwater Elev No. 621	Missouri River Grain Co., Inc. 8715 US Highway 287 Toston MT 59643 (406) 266-5258	D/MRL BR WG W2 W1 CR	700,000	6
Townsend 31046/10220.00 Broadwater Elev No. 622	Broadwater Grain & Supply, Inc. P. O. Drawer E Townsend MT 59644 (406) 266-3411	D/MRL BR W2 W1 OT W3	180,000	6
Ulm 11133/09415.00 Cascade Elev No. 623	General Mills, Inc. P. O. Box 216 Ulm MT 59485 (406) 866-3211	D/BN W2 W1 BR	168,000	13
Valier 61717/08965.00 Pondera Elev No. 624	General Mills, Inc. P. O. Box 217 Valier MT 59486 (406) 279-3203 [279-3220]	Cert Scales/H D/BN BR W1 W2 W4	305,000	52
Valier 61717/08965.00 Pondera Elev No. 625	Harvest States Cooperatives P. O. Box 66 Valier MT 59486 (406) 279-3615 [279-3757]	D/BN W1 BR W2	280,000	52
Wolf Point 01144/09140.00 Roosevelt Elev No. 626	Farmers Elevator Co. P. O. Box 28 Wolf Point MT 59201 (406) 653-2512 [653-2512]	D/BN W1 W2 BR OT RY	470,000	52
Wolf Point 01144/09140.00 Roosevelt Elev No. 627	General Mills, Inc. P. O. Box 935 Wolf Point MT 59201 (406) 653-2810 [653-2810]	D/BN W1 BR W2 W4 OT	440,000	52
Wolf Point 01144/09140.00 Roosevelt Elev No. 628	Peavey Co. P. O. Box 727 Wolf Point MT 59201 (406) 653-2710	D/BN W1 W2 BR W4 OT	400,000	30

```
-------------------------------------------------------------------------------
| BNSF RAILWAY COMPANY               | ISSUED:    FEB 05, 2009 BOOK:          4 |
| AG PRODUCTS UNIT                   | EFFECTIVE: FEB 25, 2009 SECTION:       C |
| P. O. BOX 961051                   | EXPIRES:   MAR 31, 2009 PAGE:          1 |
| FORT WORTH, TX 76161-0051          | (R)(E)                  REVISION:      3 |
| BNSF-4022-L                        | START: JAN 01, 2009   ITEM:        43416 |
|-----------------------------------------------------------------------------|
| FROM SELECTED BNSF STATIONS IN:                                             |
| MINNESOTA, MONTANA, NORTH DAKOTA, SOUTH DAKOTA                              |
|                                                                             |
| TO SELECTED BNSF STATIONS IN:                                               |
| OREGON, WASHINGTON                                                          |
|-----------------------------------------------------------------------------|
|                               GENERAL RULES                                 |
|     - COMBINATION RATE ITEM                                                 |
|     - FREIGHT CHARGES MUST BE PREPAID. PRICE APPLIES IN UNITED STATES FUNDS. |
|     - ADD THE DESTINATION RATES TO THE ORIGIN RATES TO ARRIVE AT THE TOTAL  |
|       THROUGH RATE.                                                         |
|                                                                             |
|       THESE RATES ARE SUBJECT TO OVERLOAD PROVISIONS AS PUBLISHED IN ITEMS  |
|       490 THROUGH 540, TARIFF ICC-BNSF 6100 SERIES.                         |
|                                                                             |
|       IF 286,000 LB GROSS WEIGHT ON RAIL EQUIPMENT IS FURNISHED, REFER TO   |
|       ITEM 12164.                                                           |
|                                                                             |
|       MIXED SHIPMENTS OF COMMODITIES ARE GOVERNED BY ITEM 12310, BNSF       |
|       TARIFF 4022 - SERIES.                                                 |
|     - THIS RATE CANNOT BE APPLIED ON SHIPMENTS BEFORE 01-01-2009 (START     |
|       DATE).                                                                |
|     - PRICE IS SUBJECT TO A FUEL SURCHARGE. A FUEL SURCHARGE WILL BE APPLIED |
|       TO THE RATES OR CHARGES IN THIS PRICE AUTHORITY FOR THE SHIPMENT, AS  |
|       PROVIDED FOR IN ITEM 3375-SERIES OF BNSF RULES BOOK 6100-SERIES. THIS |
|       AMOUNT WILL BE ADDED TO THE FREIGHT BILL.                             |
|     - PRICE APPLIES ON EXPORT SHIPMENTS.                                    |
|     - SWITCHING CHARGES AT ORIGIN AND DESTINATION WILL BE ABSORBED UP TO    |
|       $160.00. NO MORE THAN $160.00 PER CAR WILL BE ABSORBED. ANY ADDITIONAL |
|       AMOUNT WILL BE ASSESSED.                                              |
|-----------------------------------------------------------------------------|
|                           COMMODITY DEFINITIONS                             |
|    STCC      DESCRIPTION                                                    |
|                                                                             |
|    01137     WHEAT EXC. BUCKWHEAT SEE 01139                                 |
|-----------------------------------------------------------------------------|
|                 EQUIPMENT DEFINITIONS AND SPECIFIC RULES                    |
|(R)  COL 1: - PRICE APPLIES IF  TENDER PER SHIPMENT IS 48 CARS. PRICE APPLIES |
|              IN COVERED HOPPERS, WITH MECHANICAL DESIGNATIONS CODE LO.      |
|              PRICE APPLIES ON ALL EQUIPMENT REGISTERED IN THE UNIFORM       |
|              MACHINE LANGUAGE EQUIPMENT REGISTER (UMLER) TO LOAD TO A GROSS |
|              WEIGHT OF 268,000 POUNDS.  (SEE ITEM 11030 EXCEPTION 1 AND ITEM |
|              12164   OF THIS TARIFF FOR GOVERNING PROVISIONS).              |
|(R)  COL 2: - PRICE APPLIES IF  TENDER PER SHIPMENT IS 48 CARS. PRICE APPLIES |
|              IN COVERED HOPPERS, WITH MECHANICAL DESIGNATIONS CODE LO.      |
|              PRICE APPLIES ON ALL EQUIPMENT REGISTERED IN THE UNIFORM       |
|              MACHINE LANGUAGE EQUIPMENT REGISTER (UMLER) TO LOAD TO A GROSS |
|              WEIGHT OF 286,000 POUNDS (HEAVY AXLE-HA)   (SEE ITEM 11020     |
|              EXCEPTION 1  AND ITEM 12164 OF THIS TARIFF FOR GOVERNING       |
|              PROVISIONS).                                                   |
```

Complainant's Exhibit No. 2

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. 42124

THE STATE OF MONTANA

V.

BNSF RAILWAY COMPANY

VERIFIED STATEMENT

OF

GERALD W. FAUTH III

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc., an economic consulting firm with offices at 116 South Royal Street, Alexandria, Virginia 22314. A statement describing my background, experience and qualifications is attached hereto as Appendix GWF-1.

I have been asked to submit these comments by the State of Montana in connection with a complaint filed with the Surface Transportation Board (STB) concerning the reasonableness of rail practices of BNSF Railway Company (BNSF).[1] The complaint involves certain changes which BNSF has made to its transportation terms and operations associated with railroad wheat movements from Montana to export terminals and other destinations in the Pacific Northwest (PNW).[2]

---

[1] Effective February 12, 2010, BNSF became a subsidiary of Berkshire Hathaway Corp. (Berkshire) (see BNSF Press Release dated February 11, 2010).

[2] The PNW destinations included in BNSF 4022-M, Item 43405, issued May 19, 2011 are: Portland and Rivergate, OR and Frederickson, Kalama, Seattle, Tacoma and Vancouver, WA.

Issue Traffic & Rate Publications

According to the STB's 2009 Waybill Sample, approximately [redacted] of the BNSF's wheat tonnage from Montana went to the PNW. BNSF's current rate documents covering these PNW wheat movements include rates for over fifty Montana origins, spread throughout the state.[3]

Currently, thirteen Montana origins have "*shuttle*" facilities which have track capacity which equals or exceeds 110-cars.[4] The majority of the Montana wheat shipments to the PNW ([redacted] of the carloads in 2010) originate from these 13 shuttle facilities in 110-car shuttle trains and smaller shipments ranging from 1 to 109 cars.

As Witness Terry Whiteside indicates, prior to the advent of the 110-car shuttle facilities in Montana, BNSF encouraged grain elevators in Montana to expand their rail facilities to a 52-car minimum. As a result, most non-shuttle origins are mid-sized or so-called "*52-Car*" facilities, which have track capacities ranging from fifty-two to sixty cars.

---

[3] See, for example, BNSF 4022-M, Item 43405, issued May 19, 2011.

[4] BNSF defines a grain shuttle as "a 110-car train of dedicated high capacity (5161 cubic foot 286,000 lb GWOR) equipment with dedicated locomotives that loads in 15 hours and unloads in 15 hours." According to BNSF's grain elevator directory, Montana shuttle facilities are located in: (1) Billings; (2) Carter (opened in 2008); (3) Collins; (4) Glendive (also has a 52-car facility); (5) Grove; (6) Harlem; (7) Havre (which has two 110-car facilities and a 54-car facility); (8) Kasa Point; (9) Macon; (10) Moore (opened in 2009); (11) Pompey's Pillar; (12) Rudyard (also has a 54-car facility); and (13) Shelby (also has a 110-car and 162-car facilities). BNSF's current shuttle rates also include Great Falls as a shuttle origin, but, according to BNSF's grain directory, Great Falls does not have a shuttle facility but, in fact, includes two 52-car facilities, one 54-car facility and a 30-car facility from which shuttle trains could be constructed. It was recently announced that new 110-car shuttle facilities are currently being constructed in Chester (2 shuttle facilities) and Kintyre Flats, MT and are due to be complete by the Fall, 2011 and the 52-car facility in Kershaw will be expanded to a 110-car facility, which will increase the number of Montana shuttle origins to sixteen. (see PRNewswire, articles dated December 17, 2010 and March 1, 2011)

Based on BNSF's grain elevator directory and relevant published rate items, I have been able to identify twenty-five (25) Montana origins which currently have 52-car track capacity:[5]

Current Mid-Sized
52-Car Origins in Montana

(1) Big Sandy (54-car capacity)
(2) Conrad (54 and 56-car capacity facilities)[6]
(3) Cut Bank (54 and 60-car capacity facilities)
(4) Dutton (54-car capacity)
(5) Fairfield (54-car capacity)
(6) Fort Benton (54-car capacity)
(7) Gildford (54-car capacity)
(8) Glasgow (60-car capacity)
(9) Glendive (52-car capacity)[7]
(10) Great Falls (two 52-car capacity facilities and one 54-car facility)[8]
(11) Hardin (52-car capacity)
(12) Havre (54-car capacity)[9]
(13) Kershaw (52-car capacity)
(14) Ludington (54-car capacity;
(15) Merc (54-car capacity)
(16) Meriwether (54-car capacity)
(17) Miles City (54-car capacity)
(18) Moccasin (52-car capacity)[10]
(19) Plentywood (52-car capacity)
(20) Poplar (52-car capacity)[11]
(21) Rudyard (54-car capacity)[12]
(22) Sidney (54-car capacity)[13]
(23) Tiber (54-car capacity)
(24) Valier (54-car capacity)
(25) Wolf Point (three 54-car capacity facilities)

---

[5] Moore was a 52-car facility until 2009 when it was converted to a 110-car shuttle facility (see Gavilon Grain, LLC press release posted May 7, 2009). Carter was a 52-car facility until 2008 when it converted to a 110-car shuttle facility. (see BNSF press release dated December 4, 2006). This list also excludes Denton and Geraldine, which are 52-car origins on Central Montana Railroad (CMR) and served by BNSF via "Moccasin CM," which is listed in BNSF's rate documents. Including Denton and Geraldine would increase the number of 52-car origins to 27.
[6] There is also a 26-car capacity facility in Conrad.
[7] There is also a 110-car shuttle facility located in Glendive, which is owned by the same company.
[8] There is also a 30-car capacity facility in Great Falls.
[9] There are also two 110-car shuttle facilities in Havre, which are owned by a different company
[10] Moccasin includes "Moccasin CM" which is referenced separately in BNSF's rate documents.
[11] Poplar is located on the MRL, but included in BNSF's rate publications.
[12] There is also a 111-car shuttle facility located in Rudyard which is owned by the same company.
[13] There is also a 44-car facility in Sidney.

PUBLIC VERSION REDACTED

A summary of the annual carloads by origin based on BNSF 100% traffic tape data supplied to Montana is attached hereto as Appendix GWF-2. The following table summarizes the total BNSF Montana wheat carloads moving to the PNW from 2006 to 2010:

Table 1

Summary of BNSF Montana
Wheat Carloads to the PNW

Ln.	Item	2006	2007	2008	2009	2010
	From Shuttle Origins:					
1	Shuttle Train (≥110 Cars) Cars	[redacted]				
2	Percent of Total MT Cars to PNW					
3	Non-Shuttle (1-109) Cars	[redacted]				
4	Percent of Total MT Carloads to PNW					
5	Total Cars From Shuttle Origins	[redacted]				
6	Percent of Total MT Cars to PNW					
	From Mid-Sized 52-Car Origins:					
7	Total Cars From 52-Car Origins	[redacted]				
8	Percent of Total MT Cars to PNW					
	From Smaller (<52-Car) Origins:					
9	Total Cars From Smaller Origins	[redacted]				
10	Percent of Total MT Cars to PNW					
	Total Non-Shuttle (1-109 Cars) Shipments:					
11	Non-Shuttle Cars From Shuttle Origins (L.3)	[redacted]				
12	Non-Shuttle Cars From 52-Car Origins (L.7)					
13	Non-Shuttle Cars From Smaller Origins (L.9)					
14	Total Non-Shuttle Car					
15	Percent of Total MT Cars to PNW					
	Total BNSF Montana Wheat to the PNW:					
16	Total Montana Wheat Cars to the PNW	[redacted]				
17	Percent of Total MT Cars to PNW	100.00%	100.00%	100.00%	100.00%	100.00%

There is no question that, over the last decade, Montana shuttle facilities have increased in number and gained traffic, while the mid-sized 52-car facilities in Montana have lost traffic to nearby shuttle facilities.[14] BNSF's 100% traffic tape data produced in discovery indicates that only [redacted] of the remaining (or surviving) [redacted]52-car origins were active (in terms of wheat cars moving to the PNW) in 2010. BNSF's traffic tape data also shows that [redacted]2-car origins ([redacted]) moved [redacted] carloads to the PNW from 2006 to 2010[redacted]rigin [redacted] last moved [redacted] cars i[redacted] and [redacted]) last moved [redacted] cars i[redacted] Certainly, these 52-car origins have already been adversely impacted by the shuttle origins.[15]

In 2010, Montana's 52-car origins moved [redacted] wheat carloads to the PNW, which represented [redacted] of the total cars and [redacted]f the non-shuttle carloads ([redacted]. Despite the previous (and potential) traffic erosion to shuttle facilities and the pro-shuttle trends, the non-shuttle PNW wheat market had, for the most part, stabilized and was large enough ([redacted]) that the remaining mid-sized 52-car origins in Montana could (until recently) effectively compete with the 110-car origins for non-shuttle wheat traffic. For example, in 2008, the 52-car facility i[redacted] Montana shippe[redacted] wheat carloads to the PNW, which were

---

[14] According to press reports, it appears that the Montana shuttle facilities were first constructed in the late 1990's, but most were constructed in the early 2000's. (see Billings Gazette article titled: "Number of Shuttle Loaded Elevators Increasing" by Jim Gransbery dated March 17, 2001) The last two Montana shuttle facilities (Carter and Moore) opened in 2008 and 2009.

[15] A good example of the shuttle impact is Big Sandy. According to press reports, the last railroad shipment from Big Sandy took place in 2004.

more than were shipped from [redacted] of the 13 shuttle facilities (2008 shuttle volumes ranged from [redacted] to [redacted] carloads). With reasonable terms and freight rates, there is no reason why the core of the remaining 52-car origins could not continue to operate and even thrive.

Starting in 2008, however, BNSF took actions, via changes to the terms of its rate publications and operations at issue here, which further (and artificially) eroded the rights of the remaining 52-car origins. BNSF's changes involved replacing 52-car shipments with 48-car shipments, which, because of the STB's Uniform Rail Costing System (URCS) rules and procedures, deregulated most the 48-car traffic and allowed it, without fear of STB intervention, to subsequently publish a series of rate increases from the 52-car origins. The PNW wheat market share from 52-car origins has declined from [redacted] in 2007 to [redacted] in 2010.[16] As a result of BNSF's actions, the viability and very existence of the remaining 52-car origins is now seriously at risk.

BNSF's Switch to
<u>48-Car Rates and Shipments</u>

Under BNSF's previously-existing "***52-car minimum***" rate structure (which had been in place for some 30 years), most non-shuttle wheat shipments from Montana primarily moved in shipment sizes ranging from 52 to 109 cars. In 2008 and 2009, however, BNSF moved away from the historical 52-car minimum wheat rates and operations and switched to "***48-car***" rates and operations.[17]

---

16 For example, in 2010 only [redacted] cars were originated at [redacted] which was significantly lower than [redacted] 110-car shuttle origin

17 The terms "52-car minimum" and "48-car" are my summary terms for the actual tariff language. "52-car minimum" is short for "Tender per shipment is 52 cars and maximum not greater than 109." The term "48-car" is short for "Tender per shipment is 48 cars."

In April 2008, BNSF issued a new tariff publication under which the: "Tender per shipment is 48 cars and maximum not greater than 110 cars."[18] Although the language in BNSF's publications reduced the minimum shipment size from 52 to 48 cars, the actual rates per car did not change and 52 to 109-car shipments could and did still move under BNSF's new "48-car minimum" rates. Effective January 1, 2009, however, BNSF changed its rate publications from "*48-car minimum*" rates to "*48-car*" rates, with then 48-car rates still equal to the former 52-car rates.[19] Rather than being more inclusive, this change eliminated rates for all shipments of 49 to 109 cars. Thus, rates are now only available for Montana wheat shipments in single cars and 24 cars, 48 car shipments, and for 110-car shuttle trains, but there are no longer any rates available for shipments ranging from 49 to 109 cars.[20]

As a result, a 52-car origin which may have moved ten 52-car wheat shipments per year (520 annual cars) may now be required to move eleven shipments (e.g., ten 48-car shipments and one 40-car shipment at a higher rate) in order to move the same number of cars (i.e., 520 cars). A 52-car origin that previously had twenty-four shipments per year (52 cars x 24 shipments equals 1,248 annual cars) may now be required to handle and process at least twenty-six 48-car shipments in order to handle the same number of cars (48 cars x 26 shipments equals 1,248 annual cars), which is costly and may be even be difficult because of the relatively compact shipping season.

---

[18] See, e.g., BNSF 4022, Item 43413, issued April 15, 2008.

[19] On February 5, 2009, BNSF issued revised rate publications with an effective date of February 25, and a Start date of January 1 2009, which cover non-shuttle wheat movements to the PNW. The rates did not change, but it now read "Tender per shipment is 48 cars" (which I have termed as "48-car maximum" rates) rather than "Tender per shipment is 48 cars and maximum not greater than 110 cars." (see, BNSF-4022-L Item 43416, a copy of which is provided with the Whiteside V.S.

[20] The issue 48-car wheat traffic currently moves under rates and terms included in BNSF Rate Book 4022-M, Items 43404 and 43504, which became effective March 1, 2011 and are set to expire July, 31, 2011.

BNSF's 48-car restriction appears illogical since it underutilizes the existing capacity of the 52-car origins (which ranges from 52 to 60 cars). The current 52-car origins have capacities which, in total, can handle 1,618 cars. BNSF's 48-car restriction effectively reduces this capacity to 1,440 cars – a difference of 178 cars, which is much larger than a 110-car shuttle facility. The 48-car restriction forces inefficiencies on the 52-car origins (as well as on BNSF) and increases the costs incurred by the 52-car origins (as well as BNSF's costs). Moreover, because of intricacies associated with STB's URCS rules and policies, the 48-car limit allowed BNSF to significantly increase the existing rates.

BNSF's
<u>Focus on URCS</u>

Because BNSF dominates Montana wheat shipments and thus could be subject to STB rate reasonableness proceedings BNSF plays close attention in pricing Montana wheat to the STB's URCS costs that are associated with the wheat traffic and the STB's jurisdictional threshold of 180 percent.[21]

It is very clear that BNSF imposed the 48-car restriction in order to take improper advantage of the STB's costing procedures and regulations, particularly the make-whole adjustment under URCS.[22] BNSF also benefits from the STB's "unadjusted" URCS jurisdictional costing approach which was adopted in 2007.[23] The 48 car restriction enabled

---

[21] It is well-established that BNSF dominates railroad traffic in Montana. Montana is considered by most as one of the most "captive" states in terms of railroad market dominance. BNSF operates over 1,800 miles in Montana compared to only 125 miles for Union Pacific (UP). The 2009 Waybill Sample indicates that BNSF originated[redacted] percent of the wheat tonnage from Montana.

[22] See <u>Review of the General Purpose Costing System</u>, 2 S.T.B. 659, 664-65 (1997).

[23] In STB Ex Parte No. 646 (Sub-No. 1), <u>Simplified Standards For Rail Rate Cases</u>, served September 5, 2007 (Simplified Standards), the STB adopted a costing approach, which precludes most cost adjustments.

BNSF to significantly increase the URCS variable costs and thus significantly reduce the revenue-to-variable cost (R/VC) ratios associated with non-shuttle wheat movements. As a result, BNSF has effectively immunized itself from challenges to the reasonableness of its 48-car rates on effectively all Montana wheat shipments to the PNW from mid-sized elevators. BNSF also placed itself in a position to significantly increase its Montana wheat rates and profits from the mid-sized origins without fear of STB intervention, which it has repeatedly done since 2008.[24]

In real terms, the costs associated with 48-car shipments should be slightly higher, but not significantly different from, the costs associated with 52-car shipments, since the total shipment cost would be allocated to a shipment with 4 fewer cars. However, under the STB's URCS rules the costs attributed to 48-car shipments are significantly higher than the costs for 52-car shipments. This is primarily a result of a 50-car URCS default value which considers that shipments with 50 or more cars per shipment are *trainload* shipments rather than *multiple car* shipments. Under the STB's methodology, multiple and single car shipments are subject to so-called URCS "make-whole" adjustments, which significantly increase the costs attributed to such shipments.

BNSF's change to 48-car rates and operations, rather than being made to improve the efficiency of its operations, appears to reflect a "*gaming*" of STB costing procedures and regulations. BNSF is keenly aware of this STB URCS costing issue. By imposing a 48-car shipment size limit on origins capable of loading 52 or more cars, the URCS costs significantly increase and, therefore, the associated R/VC percentages decrease. For example, the 2009

---

[24] Witness Terry C. Whiteside describes BNSF's recent rate increases in more detail.

Waybill Sample indicates that the weighted average miles for BNSF wheat shipments from Montana to Oregon and Washington is [redacted] miles and the average load is [redacted] Using these averages, the following table shows that, based on the STB's unadjusted URCS program, the allocated cost associated with a 48-car shipment was significantly higher in 2009 than the cost allocated to a 52-car shipment:

Table 2

BNSF 2009 Unadjusted URCS Costs Associated
With 52-Car and 48-Car Wheat Shipments
([redacted] Miles and [redacted])

Ln.	Item	52 Cars	48 Cars	Increase Due to 48-Car Limit
	(1)	(2)	(3)	(4)
1	BNSF 2009 URCS Cost Per Car	$1,525.94	$1,868.87	$342.93
2	2009 STB Make-Whole Adjustment Per Car	$0.00	$266.55	$266.55
3	Total BNSF 2009 URCS Cost Per Car	$1,525.94	$2,135.42	$609.48
4	Rate Per Car At 180% R/VC (L.3 x 1.80)	$2,746.69	$3,843.76	$1,097.07

In the above example, the URCS variable cost increases by over $600 per car as a result of BNSF's 48-car shipment size limit and would allow BNSF to increase rates set at 180% by over $1,000 per car. Such a significant cost increase obviously has a great impact on the R/VC ratios and potential economic regulatory remedies associated with such movements.

I have reviewed publically available rate publications for the major Class I railroads. BNSF is the only known Class I railroad to have utilized a 48-car restriction which allowed it to "*game*" the URCS system for the purpose of deregulating grain traffic. No other major carrier to my knowledge has replaced 50-car or larger grain units with a specific rate subject to a 48-car shipment size limit, making the URCS make-whole adjustment applicable to the traffic.

On February 8, 2009, the Domestic and Trade Policy Committee of the National Association of Wheat Growers (NAWG) held a meeting in Washington, DC, which was attended by BNSF representatives. Montana Witness Terry Whiteside and I were also in attendance. Two of the main agenda items at the meeting were the recent Alternative Dispute Resolution (ADR) Agreement negotiated by BNSF and the Montana Grain Growers' (MGGA), and MGGA's R/VC study, which was developed in support of the ADR Agreement. A copy of this agreement is attached hereto as Appendix GWF-3.

During this NAWG meeting, the 48-car versus 52-car issue was discussed. Kevin Kaufman, BNSF's Group Vice President, Agricultural Products, acknowledged that he was aware of the 50-car URCS default value and the resulting costing differences between 48-car and 52-car shipments. Indeed, during the exchange, he admitted that BNSF made the change from 52 to 48 cars because of this URCS issue. It was pointed out to Mr. Kaufman that 52-car shipments continued to move under BNSF's 48-car minimum rates and that STB's URCS costing was based on the actual cars per shipment (e.g., 52-cars) and not the tariff minimum (i.e., 48-cars). Mr. Kaufman indicated that he was also aware of this fact and that BNSF was in the process of switching its operations and publications to implement the 48-car shipment size limit. Indeed, at about the same time as the NAWG meeting, BNSF changed its rate publications from "48-car minimum" rates to "48-car" rates, which effectively excluded shipments ranging from 49 to 109 cars (including 52-car shipments) from moving under the published non-shuttle rates.

Montana 52-Car Origins Have Been
Harmed By BNSF's 48-car Restriction

After decades of encouraging the expansion of elevator capacity to 52-car units, BNSF imposed a 48-car restriction which intentionally forces the underutilization of the existing capacity and additional and unnecessary costs on the remaining 52-car origins. In order to fully utilize the existing capacity, however, 52-car origins must move two shipments to replace one 52-car shipments (i.e., 48-car plus 4 cars separate under the higher single car rate). As a result, the move allowed BNSF to effectively increase its revenues without actually increasing the published rates.

More importantly, the change allowed BNSF to take advantage of the STB's 50-car trainload default value by artificially inflating the URCS costs, which significantly lowered R/VC ratios for such shipments, thus deregulating virtually all 48-car wheat traffic to the PNW and allowing subsequent "deregulated" rate increases.

It is really quite a trick! By its 2009 tariff change restricting the shipment size to 48 cars, not only was BNSF able to slightly increase the effective rates for the issue traffic by forcing more shipments to use the higher 1 to 47-car rate levels, but, at the same time, it was able to artificially lower the R/VC ratios associated with the non-shuttle shipments from the mid-sized elevators from levels well-above to levels well-below the STB's jurisdictional threshold of 180%.

Thus, this change effectively immunized the corresponding rate levels from rate reasonableness challenge and also permitted BNSF to publish a series of rate increases of the 48-car rates, with effectively no risk of a rate challenge at the STB under current STB rate guidelines.[25] The immediate effect of replacing 52-car shipments with 48-car shipments was to place approximately [redacted] percent of BNSF's Montana wheat shipments to the PNW beyond regulatory rate challenge (see Table 1).

Although BNSF's 48-car restriction applies to both 110-car shuttle origins and 52-car origins, the 52-car origins have been harmed the most, since they cannot make shipments that are large enough to take advantage of the lower 110-car rates. [redacted] As a result, the 48-car restriction predominately, if not exclusively, applies to the mid-sized 52-car origins and has had no adverse impact on the shuttle origins, which have benefited by an increase in traffic.

It is clear that BNSF's switch to 48-car shipments was done solely to take advantage of the 50-car default value and the Board's unadjusted URCS costing approach and for the sole purpose of artificially manipulating the economics of Montana's non-shuttle wheat rates and movements.

In order to further demonstrate this fact, I have prepared an evaluation of the impact of BNSF's changes on the R/VC ratios associated with Montana wheat movements from the 25 current 52-car origins to [redacted][26] The 2009 Waybill Sample indicates the vast majority [redacted] of BNSF's Montana to PNW wheat traffic moves to either [redacted] or

---

[25] BNSF also has avoided potential mediation or arbitration under the Agreement between BNSF and MGGA, which does not apply to shipments with R/VC percentages below 180% of variable costs.

[26] As previously indicated, some of the origins, such as Big Sandy, have been inactive in recent years (see Appendix GWF-2)

[redacted][27] These destinations involve comparable distances and the rates are identical, therefore the associated costs and R/VC ratios are not significantly different. I have developed the URCS costs based on the STB's "unadjusted URCS" approach and using STB's 2008 and 2009 URCS data for BNSF. The BNSF 2009 URCS data was indexed to a Second Quarter 2010 cost level based on STB indexing procedures This analysis is attached as Appendix GWF-4 and summarized in the following table:

---

27 [redacted]

Table 3

Summary of Impact on R/VC Percentages
As a Result of BNSF's 48-Car Restriction[28]

		BNSF R/VC Percentages & Increased Revenue Before & After BNSF's 48 Car Restriction					R/VC % Assuming BNSF Retained 52-Car Rates
Ln.	52-Car Origin	2008 52-Car R/VC	2008 48-Car R/VC	2008 R/VC Reduction	Increased Revenue Per Car	2011 48-Car R/VC	2011 52-Car R/VC
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Big Sandy	211%	153%	58%	$1,002.16	188%	263%
2	Conrad	218%	158%	60%	$944.97	194%	272%
3	Cut Bank	223%	162%	61%	$914.14	199%	279%
4	Dutton	211%	153%	58%	$962.38	189%	265%
5	Fairfield	217%	157%	60%	$844.25	186%	260%
6	Ft. Benton	202%	146%	56%	$1,005.89	181%	253%
7	Gildford	219%	159%	60%	$828.08	188%	263%
8	Glasgow	212%	154%	58%	$927.06	182%	254%
9	Glendive	186%	135%	51%	$1,184.93	166%	232%
10	Great Falls	204%	148%	56%	$980.78	184%	257%
11	Hardin	183%	133%	50%	$1,093.18	166%	232%
12	Havre	217%	157%	60%	$844.25	186%	260%
13	Kershaw	203%	147%	56%	$1,003.66	182%	254%
14	Ludington	201%	146%	55%	$1,148.12	177%	247%
15	Merc	198%	144%	54%	$1,022.05	170%	238%
16	Meriwether	225%	163%	62%	$903.20	201%	281%
17	Miles City	187%	119%	68%	$1,143.41	168%	235%
18	Moccasin	194%	141%	53%	$1,000.51	174%	244%
19	Plentywood	197%	143%	54%	$1,022.54	170%	238%
20	Poplar	208%	151%	57%	$966.35	178%	249%
21	Rudyard	220%	159%	61%	$822.12	189%	264%
22	Sidney	198%	144%	54%	$1,151.35	175%	245%
23	Tiber	221%	161%	60%	$949.94	197%	275%
24	Valier	215%	156%	59%	$953.43	192%	268%
25	Wolf Point	209%	152%	57%	$952.92	179%	251%
26	**Average**	**205%**	**147%**	**58%**	**$1,003.40**	**180%**	**252%**

[28] Based on rates and miles published by BNSF and the STB's public URCS data. (see Appendix GWF-4)

Table 3 shows that, as a result of BNSF's 48-carshipment size limit, the R/VC percentages dropped from an average of 205%, with many percentages even higher (Col.2), to well-below 180% (147% average, Col.3), which represented an average drop in the R/VC percentage of 58% (Col.4). BNSF was then able to significantly increase its revenues by an average which exceeds $1,000 per car, which would equate to over $48,000 per shipment (48 cars x $1,000). Despite the increased freight charges, the current R/VC average is only 180% and ranges from 166% to 201%, which would effectively prevent a rate challenge.[29] However, if 52-origins could continue to move 52-car shipments, the R/VC percentages would be significantly above 180% with an average of 252% (Col.7)

It should be noted that the R/VC percentages may also be impacted by Berkshire's recent acquisition of BNSF. A recent STB filing by Western Coal Traffic League estimated that the acquisition premium based on a book value approach was $7.625 billion. Unless the STB prevents a write-up, the acquisition premium will impact and inflate the BNSF's 2010 and future URCS calculations and allow BNSF to increase rates from the 52-car origins even more.[30]

---

29 Even where R/VC ratios are slightly above 180% R./VC as a result of post 2009 rate increases, the narrow margins over; 180% will not support a rate challenge. The Three-Benchmark approach was estimated by the Board to cost $250,000 several years ago, and undoubtedly costs more now. Rates marginally above 180% R/VC cannot economically be attacked by elevators with the typical small traffic volumes, as is the case with Montana's mid-size elevators. See Table 1, supra.

30 See WCTL filing in STB Finance Docket No. 35506, dated May 2, 2011. Under STB's URCS program, road property investment is currently considered 50% variable and equipment investment is considered 100% variable. These BNSF investments and BNSF URCS costs will increase as a result of the Berkshire transaction, unless corrective action is taken. Moreover, BNSF will be entitled to a return on investment equal to the pre-tax current cost of capital rate of 15.15% which is used in the STB's 2009 URCS calculations (as opposed to the 10.43% after tax level used in STB's revenue adequacy determinations). Berkshire would expect an annual increase in depreciation expense, which is a major URCS cost component. Thus BNSF's 2010 and future URCS costs would increase further..

Since the 52-car origins have been subjected to increases in freight charges which average over [redacted] per car and more unchallengeable increases can be expected, the ability of the mid-sized origins to compete for the PNW wheat traffic will be reduced. As can be seen from the following chart, this PNW wheat traffic is crucial in terms of survival for these elevators:

Table 4

2009 BNSF Carloads of Farm Products (STCC 01)
Originating From Montana 52-Car Origins [31]

REDACTED

The loss of the PNW wheat traffic could result in the additional losses of mid-sized elevators and their capacity, which is important for Montana's wheat traffic to other destinations (which is limited due to distance), for barley traffic, and for other STCC 01 traffic such as peas, cowpeas and beans.

[31] See Appendix GWF-5.

BNSF's Use of URCS
<u>Mileage Circuity Factor</u>

BNSF would apparently argue that the URCS costs are even higher than those reflected in Table 4. BNSF maintains that the URCS mileage circuity factor (1.126 for covered hoppers) should be applied to BNSF's actual miles, which inflates the actual mileage and URCS variable costs.[32]

In 2007, the STB adopted the "unadjusted" URCS approach, stating:.

> The Board will use its unadjusted URCS model to determine the variable costs for a rail carrier. If the carrier is not a Class I carrier, the Board will use the most appropriate regional URCS data. The only adjustments allowed to the URCS Phase III program would be those adopted in Ex Parte No. 431 (Sub-No 2). See Review of the General Purpose Costing System, 2 S.T.B. 754 (1997); Review of the General Purpose Costing System, 2 S.T.B. 659 (1997). Those adjustments include the so-called "270" volume shipment adjustments, the make-whole adjustments, TOFC/COFC adjustments, and RoadRailer adjustments. ***In addition, the circuity factor is always set to one when actual miles are used to calculate the variable costs.*** (emphasis added) [33]

Although the Board was clear that the circuity factor should be 1.0 rather than 1.126 or some other factor, BNSF has said that the URCS circuit factor should be utilized, which represents a further "gaming" of URCS.

In its negotiation of the ADR agreement with MGGA, BNSF advocated the use of the circuity factor.[34] BNSF maintains that the actual miles available in its publications are not

---

32 See Appendix GWF-3, BNSF Agreement with MGGA, at page 11.

33 See STB Ex Parte No. 646 (Sub-No. 1), <u>Simplified Standards For Rail Rate Cases</u>, served September 5, 2007, page 27

34 In 2008, MGGA prepared a R/VC analysis (with the apparent assistance of BNSF) which showed that the R/VC percentages for 48-car shipments ranged from 142% to 169% and reflected the use of the URCS 1.126 circuity factor. See http://www.mgga.org/FarmPolicy/Rail/Montana_RVC_analysis.pdf.

"actual" miles but rather the shortest miles between points. BNSF states that "actual miles are not available to the public (and are constantly changing)."

BNSF asserts that the actual circuity factor is 1.267, "but the STB uses an average circuity factor of 1.126 for single and multiple moves."[35] I have been costing railroad movements by applying URCS and its predecessor, Rail Form A (RFA), in proceedings before the STB and the Interstate Commerce Commission (ICC) for over 30 years. The ICC and STB have always used and accepted the actual miles of the shortest route of movement in rail costing, which are represented in BNSF mileage publications (BNSF Mileage Tariff 6003).

BNSF's mileage based fuel surcharge calculations are based on BNSF's published miles, which are not adjusted by the 1.126 industry-wide URCS circuity factor. I have compared the BNSF published miles with the miles included in the STB's Waybill Sample, which were developed by ALK's PCMiler program. In most cases, the published BNSF miles are the same or very close to the STB/ALK miles.

BNSF, in discovery documents provided to Montana, uses the example of the movement from [redacted][36] BNSF indicates that the shortest route is [redacted] BNSF maintains that, because one line was out of service and because of operational concerns involving the Cascade Mountains, [redacted] Historically, the STB and ICC would use [redacted] miles and the shipper would not be charged the [redacted] additional miles incurred by BNSF for

---

[35] [redacted]

[36] *Ibid.*

operating convenience. If the line is permanently out of service and abandoned, BNSF should adjust its mileage publications to reflect the actual route of movement.

If a STB rate reasonableness case could be pursued by a mid-sized elevator subject to the 48-car shipment size limit, BNSF would undoubtedly maintain that the current R/VC ratios of the issue traffic, as calculated using the 1.126 URCS circuity factor, would range from 148% to 180% and average 162%.

R/VC Percentages For
48 and 52-Car Shipments
Are Significantly Understated

BNSF would likely maintain that the rate increases and the current rate levels for the 52-car origins are below the STB's jurisdictional threshold. Consequently, BNSF's seemingly insignificant switch from 52-car to 48-cars resulted in *defacto* deregulation of the issue traffic.

As can be seen from Table 3, the current R/VC percentages for 48-car shipments from 52-car facilities (Col.6) range from 166% to 201%. These R/VC percentages, however, significantly understate the profit margins for 48-car shipments. The true and actual R/VC ratios associated with these movements, because of numerous operating economies, are likely much higher than the R/VC ratios for 52-car shipments, which average 252%.

Under STB standards, 48-car shipments become classified as "*multiple-car*" movements, which range from 6 to 49 cars. As previously indicated, multiple-car shipments (along with single car shipments, which range from 1 to 5 cars) are subject to the STB's upward URCS "make-whole" adjustments, whereas trainload and unit train shipments (50 or more cars) are not subject to these upward adjustments. Under the STB's "unadjusted" URCS approach, only a limited downward cost adjustment (known as the "270" volume shipment adjustments) to the

URCS switching costs is allowed for multiple-car, trainload and unit train movements. For multiple car movements, such as the issue 48-car shipments, the downward "270" adjustments are more than countered by upward "make-whole" adjustments.

There are numerous economies associated with the BNSF's wheat movements from Montana's 52-car facilities to the PNW, which are not adequately reflected by the application of the STB's "unadjusted" URCS approach. The following table shows BNSF's URCS system average train weights:

Table 5

BNSF 2009 URCS System
Average Train Weights

	Average Train Weight (Gross Tons)			
Item	**Way Trains**	**Through Trains**	**Unit Trains**	**All Trains**
BNSF 2009 URCS	1,965	5,677	9,675	7,047

BNSF multiple-car movements (such as the issue 48-car shipments) are assumed to move in system average way and through trains, which have average weights of 1,965 and 5,677 gross tons, respectively. The BNSF trains moving wheat from Montana's 52-car facilities, however, are substantially heavier than BNSF's average way and through trains. The shipment weights associated with 48 or 52-car shipments, by themselves, can exceed 6,500 gross tons and thus greatly exceed BNSF's system average way train weight of 1,965 gross tons and also exceed the average through train weight of 5,677 gross tons.

These large shipments, however, are normally coupled with other large shipments into even larger trainloads bound for the PNW. [redacted] In

Appendix GWF-6, I have summarized BNSF Average 2010 train weights (gross tons) for shipments from 52-Car origins to the PNW.

As can be seen, most of the shipments from the 52-car facilities moved in one to three trains (the average is [redacted] trains) and moved in trains with weights that are significantly larger (up to [redacted] gross tons) than BNSF's URCS system average for way and through trains (1,965 and 5,677 gross tons, respectively). As a result of the larger train sizes, BNSF's actual costs for these movements would be allocated to more units (cars or tons) and thus would be lower than the system average URCS costs that are allocated under the STB's unadjusted URCS approach.

There are likely to be many other economies, such as reduced car and crew costs, that are also not reflected by the STB's unadjusted approach. Consequently, the actual costs associated with the issue 48-car or 52-car shipments should be closer to the costs allocated to trainload and unit trains (which are not subject to the STB's "make-whole" adjustments) rather than multiple-car movements. Yet, Montana is barred from making such adjustments under STB's unadjusted URCS approach. Only BNSF has the ability to make changes, such as those at issue here, which can manipulate the STB's unadjusted URCS approach.

Conclusion

BNSF's 48-car restriction has enabled it to take unfair advantage of the STB's 50-car URCS default value, as well as the STB's unadjusted URCS approach, in order to significantly increase 48-car rates from 52-car origins in Montana without fear of STB intervention. As a result of BNSF's 48-car restriction, captive mid-sized elevators have lost, and will (without STB intervention) continue to lose, the right to challenge their rate levels as excessively high. BNSF's higher and uncontestable 48-car rate structure will obviously hurt the future viability of

Montana's 52-car origins and could increase the costs to Montana's farmers by way of longer truck hauls to the shuttle facilities. Winners and losers in Montana will increasingly be chosen by BNSF through its gaming of the STB's URCS system.

BNSF's actions effectively deregulated a significant volume of traffic and allowed it to significantly increase rates. Despite these increases, this gaming still places most Montana PNW 48-car wheat movements below the jurisdictional threshold of 180% and effectively deregulates the remaining traffic where R/VC percentages are only marginally above 180%, making it economically unfeasible to bring a rate challenge for a minimum cost of $250,000. It appears that additional uncontestable rate increases can be expected in the near future.

If STB approves BNSF's actions, some of the most captive traffic from one of the most rail captive states, although very profitable, will not be subject to STB rate jurisdiction. Moreover, BNSF and the other railroads will be given a green light to similarly manipulate URCS costs, force captive traffic below 180% and increase rates. If BNSF's actions are approved, what would stop it and other railroads from imposing similar shipment size restrictions on corn from Iowa or shipments of other commodities in other regions?

If approved, the decision could result in additional rate increases for captive shippers, force more traffic outside STB regulatory oversight and have much broader implications on STB's internal systems, policies and regulations, such as URCS, the Waybill Sample, rate reasonableness guidelines and standards (i.e., Full-SAC, Simplified-SAC and Three Benchmark tests), revenue adequacy determinations, and other STB policies and regulations. BNSF's actions could also limit a shipper's ability to develop a reasonable comparison group under the STB's Three Benchmark test, which is hard enough already for a State like Montana, essentially served by one railroad.

For these reasons, I urge the Board to find that BNSF's imposition of a 48-car restriction on Montana wheat movements is an unreasonable practice.

S:\mcd\FauthVerifiedStatement(Final)

VERIFICATION

The foregoing statement is true and accurate to the best of my belief and knowledge.

Gerald W. Fauth, III

Subscribed and sworn to before me this 28th day of June 2011.

Notary Public

My commission expires: February 28th, 2014

Wilson Watts Nash
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7343675
My Commission Expires
February 28, 2014

STATEMENT
OF
BACKGROUND, QUALIFICATIONS AND EXPERIENCE
OF
GERALD W. FAUTH III

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc. (GWF), an economic consulting firm with offices at 116 S. Royal Street, Alexandria, Virginia 22314. I a recognized expert on transportation issues with over 30 years experience in the private sector and in the Federal government.

This statement generally describes my background, qualifications and experience. The majority of experience has involved economic, regulatory, public policy and legislative issues primarily associated with, or related to, the U. S. railroad industry. Most of my work has involved regulatory proceedings and related projects before, or related to, the U.S. Surface Transportation Board (STB) and its predecessor, the Interstate Commerce Commission (ICC). I have extensive experience in working in regulatory and other proceedings and projects involving railroad mergers, transactions, acquisitions, abandonments, rate reasonableness and other railroad related issues. These matters have involved railroad issues on a nation-wide, system-wide and individual railroad line basis.

GWF has been engaged in the economic consulting business for over 50 years. My part time affiliation with GWF began in 1972. I began working for GWF on a full-time basis on May 15, 1978 and was employed by GWF continuously until November 1, 1999 at which time I took a leave of absence in order to take a position with the STB. At the STB, I served as Chief of Staff for one of the three Board Members appointed by the President, Vice Chairman Wayne O. Burkes. I returned to GWF and consulting work effective June 23, 2003 after Mr. Burkes resigned his position to run for a political office.

Over the years, I have submitted expert testimony before ICC, STB, state regulatory commissions, courts and arbitration panels on a wide-variety of issues in numerous proceedings. In addition, I worked for 3½ years at the STB where I reviewed, analyzed and made recommendations on over 600 written formal decisions that were decided by the entire Board. These proceedings involved all matters of STB jurisdiction and had an impact on the transportation industry and the national economy.

Railroad transactions have long been the subject of ICC and STB regulatory proceedings and other matters involving: railroad merger and acquisition approval and oversight proceedings; railroad line abandonment proceedings; line sales; feeder line application proceedings; and other railroad transaction-related proceedings. I have been involved in numerous such proceedings and projects as an expert witness and as an STB staff advisor.

I was an expert witness in the last two major Class I railroad merger proceedings: STB Finance Docket No. 32760, Union Pacific Corporation, et al. – Control and Merger – Southern Pacific Rail Corporation, et al. and STB Finance Docket No. 33388, CSX Corporation, et al., Norfolk Southern Corporation, et al. – Control and Operating Leases / Agreements – Conrail, Inc., et al. My testimony in these major merger proceedings concerned the potential adverse competitive impact of these mergers on two key areas.

In addition to my work in major railroad merger proceedings, I have submitted expert testimony in other railroad finance docket and abandonment proceedings before the ICC and STB. In these proceeding, I have developed and submitted evidence relating to the valuation and economics of the railroad line at issue, such as: going concern and net liquidation values; freight revenues and traffic; operating costs; maintenance costs: right-of-way valuation; etc.

In addition to my testimony in merger and other rail transaction proceedings, I served as an original member of the Conrail Transaction Council, which was established by the Board in Finance Docket No. 33388. This council consisted of representatives of the CSX, NS and shipper organization and provided a forum for timely and efficient communication of information and problems concerning the transaction. I was one of the original members of the Conrail Transaction Council and attended every meeting of the council until my employment with the Board.

During my time at the Board, I was actively involved in the STB merger oversight proceedings associated with the UP/SP and Conrail transactions. Perhaps the most significant merger-related proceedings that I was involved in during my time at the Board were STB Ex Parte No. 582, Public Views on Major Rail Consolidations and STB Ex Parte No. 582 (Sub-No.1), Major Rail Consolidation Procedures. These STB major rulemaking proceedings involved extensive oral hearings and written testimony from hundreds of witnesses. The Board concluded that its existing rules governing railroad mergers and consolidations, which had been developed nearly 20 years earlier, were not adequate for addressing the broad concerns expressed and initiated a major rulemaking proceeding which resulted in a major revision to the Board's rules.

I have a significant amount of experience in issues involving railroad rate reasonableness. I was actively involved in the initial ICC regulatory proceedings over 25 years ago in which the ICC first proposed and established guidelines which have since evolved into the STB's current railroad rate reasonableness guidelines. I was actively involved in several of the first cases to test the ICC's then proposed guidelines. For example, I was the primary expert witness in ICC Docket No. 40073, South-West Railroad. Car Parts Co. v. Missouri. Pacific Railroad, which was the *first* case to test the ICC's proposed simplified guidelines, which are now known as the STB's Three-Benchmark approach. More recently, I submitted extensive written and oral testimony in STB Ex Parte No. 646 (Sub-No. 1), Simplified Standards For Rail Rate Cases, on behalf of a group of 30 major stakeholders and my testimony was cited by the Board in its decision served September 5, 2007. My work and testimony in these proceedings has helped shape the STB's current railroad rate reasonableness guidelines.

Proceedings before the Board often involve traffic and market analyses using the Board's Waybill Sample, which is a computer database of approximately 600,000 records of sampled railroad movements. I am extremely familiar with this database. Over the years, I have performed hundreds of analyses using this data which has been used as evidence in merger and other proceedings before the Board.

Many of our projects have involved the development of railroad variable cost analyses based on the application of URCS and its predecessor, Rail Form A (RFA). URCS is used to determine STB jurisdiction and is an integral component of the STB's Full-SAC method, new Simplified-SAC standard and recently modified Three-Benchmark approach. I have an extensive working knowledge of the development and application of URCS and RFA. I have prepared URCS cost analyses for thousands of individual railroad movements. I also submitted expert testimony in ICC Ex Parte No. 431 (Sub-No.1), Adoption of the Uniform Railroad Costing System as a General Purpose

Costing System for Regulatory Costing Purposes and more recently in STB Ex Parte No. 431 (Sub-No. 3), Review of the Surface Transportation Board's General Costing System.

I am a 1978 graduate of Hampden-Sydney College in Hampden-Sydney, Virginia where I earned a Bachelor of Arts degree. My major areas of study were history and government. My senior paper in college dealt with the History of Railroad Deregulation. I am a 1974 graduate of St. Stephen's School for Boys (now St. Stephen's and St. Agnes School), located in Alexandria, Virginia. My senior project and paper in high school dealt with the ICC and the Energy Crisis of 1973.

My professional memberships included the Transportation Research Forum and the Association of Transportation Law Professionals.

SUMMARY OF 2006 TO 2010 BNSF WHEAT CARLOADS FROM MONTANA TO THE PNW (OR & WA)

Ln.	Origin (1)	2006 Cars (2)	2007 Cars (3)	2008 Cars (4)	2009 Cars (5)	2010 Cars (6)	Total Cars (7)
	Cars From 52-Car (52 to 60 Car Capacity) Elevators						
1	Big Sandy						
2	Carter 1/						
3	Conrad						
4	Cut Bank						
5	Dutton						
6	Fairfield						
7	Ft. Benton						
8	Gildford						
9	Glasgow						
10	Glendive 2/						
11	Great Falls						
12	Hardin						
13	Havre 3/						
14	Kershaw						
15	Ludington						
16	Merc						
17	Merewether						
18	Miles City						
19	Moccasin						
20	Moore 4/						
21	Plentywood						
22	Poplar						
23	Rudyard 5/						
24	Sidney						
25	Tiber						
26	Valier						
27	Wolf Point						
28	**Total**						
29	**% of Total**						

SUMMARY OF 2006 TO 2010 BNSF WHEAT CARLOADS FROM MONTANA TO THE PNW (OR & WA)

Ln.	Origin (1)	2006 Cars (2)	2007 Cars (3)	2008 Cars (4)	2009 Cars (5)	2010 Cars (6)	Total Cars (7)
	Cars From 110-Car Shuttle Elevators						
30	Billings						
31	Carter 1/						
32	Collins						
33	Glendive 2/						
34	Grove						
35	Harlem						
36	Havre 3/						
37	Kasa Point						
38	Macon						
39	Moore 4/						
40	Pompeys Pillar						
41	Rudyard 5/						
42	Shelby						
43	**Total**						
44	**% of Total**						
	Cars From Smaller (<52 Cars) Elevators						
45	Bainville						
46	Belgrade						
47	Big Timber						
48	Bozeman						
49	Choteau						
50	Clarkston						
51	Devon						
52	Harrison						
53	Kalispel						
54	Manhattan						
55	Pablo						
56	Plains						
57	Polson						
58	Ronan						
59	Stanford						
60	Stanley						
61	Sunburst						
62	Sweet Grass						
63	Three Forks						
64	Toston						
65	Townsend						
66	Weeksville						
67	**Total**						
68	**% of Total**						

SUMMARY OF 2006 TO 2010 BNSF WHEAT CARLOADS FROM MONTANA TO THE PNW (OR & WA)

Ln.	Origin	2006 Cars	2007 Cars	2008 Cars	2009 Cars	2010 Cars	Total Cars
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Total Cars From All Montana Elevators						
69	**Total**						
70	**% of Total**						

Footenotes to Appendix GWF-2

1/ Carter was upgarded from a 52-car facility to a 110-car shuttle facility in 2007. According to BNSF traffic tape data, the first shuttle from Carter moved in . (see also BNSF press release dated December 4, 2006)

2/ Glendive has both 110-car shuttle and 52-car facilities. The facilites in Glendive are owned by the same company (CHS) As a result, any Glendive shipments that may have moved from the 52-car facilities could not be distinguished from shipments from the 110-car facility and were assumed to have moved from the 110-car facility.

3/ Havre has both 110-car shuttle and 52-car facilities. The facilites in Havre are owned by different companies (Columbia Grain vs. ADM/CHS) and thus shipments from the 52-car facility could be determined from the BNSF traffic tape data.

4/ Moore was upgarded from a 52-car facility to a 110-car shuttle facility in 2008. According to a press release from Gavilon Grain, LLC dated May 7, 2009, the first 110-car shuttle from Moore was loaded out on April 2, 2009.

5 Rudyard has both 110-car shuttle and 52-car facilities. The facilites in Rudyard are owned by the same company (Columbia Grain) As a result, any Rudyard shipments that may have moved from the 52-car facilities could not be distinguished from shipments from the 110-car facility and were assumed to have moved from the 110-car facility.

AGREEMENT TO ADMINISTER ALTERNATIVE DISPUTE RESOLUTION OF RAIL GRAIN RATE DISPUTES

THIS AGREEMENT TO ADMINISTER ALTERNATIVE DISPUTE RESOLUTION (the "Agreement to Administer ADR"), dated as of January 30, 2009, is entered into by and among (i) BNSF RAILWAY COMPANY, a Delaware corporation (hereinafter referred to as BNSF), and (ii) Montana Grain Growers Association, Great Falls, Montana, and (iii) the Montana Farm Bureau Federation, Bozeman, Montana (hereinafter referred to each as Producer Organization(s) or "*PROORG(s)*"), non-profit trade associations.

WHEREAS BNSF Railway has publicly held itself out as willing to have certain disputes involving rates charged for the transportation of grain resolved through mediation and voluntary, binding arbitration, subject to the procedures outlined and incorporated below and in the form attached hereto as Exhibit I (*A form multiparty Producer Organization- Producer- BNSF Agreement For Mediation and Arbitration of Rail Grain Rate Disputes*); and

WHEREAS each Producer Organization is an organization of dues paying members representing Montana wheat and barley producers desiring to support and provide procedures for its members to mediate and when necessary arbitrate disputes involving grain rates between an individual member producer or producers utilizing a specific BNSF rate as defined in Exhibit I ("Referred to individually or collectively herein as Producer or Producers") and BNSF in which a Producer Organization would represent its producer member or members; and

WHEREAS BNSF desires to work with the Producer Organizations to provide processes for ADR for its members involving disputes between BNSF and its producers in the agricultural sector, and each Producer Organization is willing to administer such mediations and arbitrations in the interest of promoting dispute resolution in the agricultural sector for its members in the state of Montana,

NOW, THEREFORE, in consideration of the foregoing and the promises and representations below, the Parties agree as follows:

1. Upon request by BNSF and a Producer, each *PROORG*, upon its determination that the Producer's claim has merit, will represent that Producer in mediation and arbitration proceeding to resolve a Grain Rate Dispute initiated in accordance with the form of Agreement for Mediation and Binding Arbitration of Rail Grain Rate Disputes between a *PROORG* producer member and BNSF attached hereto as Exhibit I.

2. *PROORGs* and BNSF agree to use their best efforts to designate, within 30 days of execution of this Agreement, a list of at least five persons experienced and knowledgeable in agricultural marketing and transportation and qualified to adjudicate a rate dispute who would be available as potential arbitrators of disputes to be mediated or arbitrated pursuant to this Agreement. A potential arbitrator willing to serve shall serve on such panel so long as agreeable to all parties, provided a panelist serving on a pending arbitration cannot be removed from such panel by any Party prior to the completion of such proceeding.

3. Upon the determination of the *PROORG's* steering committee formed pursuant to section 9 that the Producer's claim has merit, either *PROORG* will notify BNSF,

forward the executed Exhibit 1 to BNSF and contact BNSF to expeditiously arrange a conference call to discuss procedures for a face-to-face meeting between representatives of BNSF and the PROORG. In the event more than 2 *PROORGs* become parties to this Agreement pursuant to section 9, such determination shall be made by a majority of the steering committee representatives. BNSF agrees to meet with a representative of a *PROORG* designated by the steering committee, and the Producer if it wishes to attend; within 30 days of receipt of such notice, at a mutually convenient location as soon as practicable, and both parties agree to send representatives with the authority to resolve the dispute. Upon the request of either Producer or BNSF, a *PROORG* shall designate a third individual to act as mediator at such negotiating session, with the parties agreeing to share equally the cost of such mediator.

4. If the mediation is unsuccessful and the parties proceed to arbitration under Exhibit I, or both BNSF and the *PROORG(s)* agree to waive mediation in accord with Exhibit I, *PROORG(s)* will represent the Producer in the arbitration proceeding pursuant to Exhibit I held before a panel of three arbitrators drawn from the pool of eligible arbitrators previously designated by BNSF and *PROORG(s)* under paragraph 2 above. If the parties cannot agree upon three such eligible arbitrators, or insufficient arbitrators are available from such list, *PROORG(s)* and BNSF shall each nominate one individual for the panel, and those two shall select a third arbitrator by mutual agreement or by each submitting lists of potential arbitrators until a common individual is found on both lists. The arbitration proceeding shall be administered by the JAMS Dispute Resolution organization (www.jamsadr.com), ("JAMS") and conducted by the Panel in accordance with the Arbitration Rules of the National Grain and Feed Association ("NGFA Arbitration Rules") except as augmented or modified by agreement of the Parties or more specifically provided in Exhibit I.

5. The Arbitration Panel will issue a reasoned written decision. The arbitrators' decision shall be enforceable and subject to confirmation in any court of competent jurisdiction and shall be subject to review only on the grounds for vacating an arbitration award set forth in Section 10 of the Federal Arbitration Act, 9 U.S.C. § 10.

6. Unless an alternative body has been mutually agreed upon by *PROORG* and BNSF, the arbitration proceeding will be administered by JAMS pursuant to the fee schedule of that organization, payable upon initiation of the arbitration proceeding at JAMS by BNSF's filing of the complaint received from a *PROORG* pursuant to Section 11 a of Exhibit I.

7. Information and evidentiary filings regarding the issues submitted for resolution in any Grain Rate Dispute will be restricted to the members of the Panel selected to arbitrate a given dispute and *PROORG(s')* staff personnel who need to have access to such information to represent the Producer(s) in the arbitration. All information related to the dispute will be maintained in confidence by *PROORG* staff personnel and the Panel during the pendency of the arbitration in accord with the confidentiality provisions of Exhibit I. All hard copy and electronic records containing confidential information will be returned to the disputants or destroyed at the conclusion of the arbitration at the request of the party providing such information.

8. This Agreement to Administer ADR shall remain in effect for a period of two (2) years from execution. Its term will thereafter automatically be renewed for subsequent two (2) year extended terms unless written notice has been given by any Party to the others 90 days before the end of the primary term or any extended term of that Party's desire to terminate the Agreement to Administer ADR upon the expiration of that term;

provided, however, this Agreement will remain in effect to complete the handling of any proceeding commenced before termination.

9. Within 10 days of execution, each Producer Organization party to this Agreement agrees to designate up to three (3) representatives to constitute a steering committee to coordinate the handling of matters under this Agreement and act on behalf of both PROORGs. Upon agreement of the Producer Organizations initially entering into this agreement, the Parties may agree to include additional organizations as parties. In that event, such organization(s) shall also appoint up to three (3) representatives to such steering committee.

10. Notices

Except as expressly provided otherwise, any notice, election or other correspondence required or permitted hereunder shall become effective upon receipt and, except invoices and payments, shall be deemed to have been properly given or delivered when made in writing and delivered personally to the party to whom directed, or when sent by United States certified mail with all necessary postage or overnight delivery service and charges fully prepaid, return receipt requested, and addressed to the party at the below-specified address:

Notices to Producer Organizations:

Montana Grain Growers Association
750 6th Street SW, Suite #202
P.O. Box 1165
Great Falls, MT 59403-1165
Attn: Executive Vice President

Montana Farm Bureau Federation
502 South 19th, Ste 104
Bozeman, MT 59718
Attn: Executive Vice President
406-587-0319 (fax)

Notices to BNSF Railway Company:

The BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76102
Attn: Group VP Agricultural Products

Copy to:

The BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76102
Attn: VP & General Counsel - Regulatory

The addresses may be changed upon written notice in the manner provided above, and no amendment hereof shall be required for a change of address. If given by telephone, fax or verbally, the notice shall be confirmed in writing in accord with the provisions of this Section as practicable thereafter.

IN WITNESS WHEREOF, the Parties to this Agreement have caused their duly authorized representatives to execute it as of the day and year first above written.

Montana Grain Growers Association

By: [signature]

Title: President

Date: 1-29-09

Montana Farm Bureau Federation

By: [signature]

Title: President

Date: 1-30-2009

BNSF Railway Company

By: [signature]

Title: KEVIN D. KAUFMAN
GROUP VICE PRESIDENT
AGRICULTURAL PRODUCTS

Date: 28 Jan 09

Exhibit I to Agreement to Administer ADR

Agreement For
Mediation and Binding Arbitration Of
Rail Grain Rate Disputes

THIS AGREEMENT TO MEDIATE and ARBITRATE as forms of Alternate Dispute Resolution (the "Agreement for ADR"), dated as of ________, 2009, is entered into by and among (i) BNSF RAILWAY COMPANY, a Delaware corporation, (ii) [insert name of PRODUCER], a [specify state of corporation or other organizational structure], and (iii) [insert name(s) of Producer Organization(s), PROORG or PROORGs [specify state of incorporation or other organizational structure].

WHEREAS, BNSF Railway Company ("BNSF") has publicly indicated its willingness to have certain disputes involving rates charged for the transportation of wheat and/or barley resolved through voluntary mediation or, if necessary, binding arbitration; and

WHEREAS, BNSF hereby holds itself out as willing to enter into agreements providing for voluntary mediation and binding arbitration with Producer Organization(s) ("[PROORGs]") ("referred to individually and/or collectively in this Agreement as PROORG")meeting the eligibility criteria specified herein as an alternative to litigating the issue of transportation rate reasonableness before the Surface Transportation Board; and

WHEREAS, [complete with name of PROORG(s)] wish(es) to facilitate alternative dispute resolution processes between its producer members and BNSF Railway involving disputes over transportation rates for the movement of wheat and/or barley, and, to that end, has entered into an agreement with BNSF providing an administrative mechanism by which [PROORG] would participate in the resolution of such disputes through mediation and/ or arbitration as the sole representative of its Producer member or members (" The Agreement to Administer Alternative Dispute Resolution of Rail Grain Rate Disputes dated January 30, 2009 or BNSF- Producer Organizations Agreement to Administer ADR"); and

WHEREAS, [PRODUCER or PRODUCERS] ("referred to individually and/or collectively in this Agreement as Producer") wishes to avail itself of the opportunity of voluntary mediation and, if necessary, binding arbitration pursuant to the terms of this Agreement for ADR with BNSF and represents its eligibility under the criteria specified herein to do so,

NOW, THEREFORE, in consideration of the foregoing and the promises and representations below, the Parties agree as follows:

1. Agreement for Representation in Mediation and Arbitration of Grain Rate Dispute

Upon execution of this Agreement for ADR, *PROORG(s)*, BNSF and such initial Producer(s) who execute the Agreement agree to pursue mediation and arbitration pursuant to the terms of this Agreement. By such execution, Producer agrees that *PROORG* is the principal and sole authorized Representative to seek resolution for Producer of the specific grain rate dispute it submits for resolution pursuant to this Agreement and that BNSF shall be entitled to rely on communications and acts of *PROORG(s)* as though they were communications and acts of Producer.

2. Eligibility to Mediate and Arbitrate Grain Rate Dispute

Eligibility to mediate and arbitrate under this Agreement for ADR is limited to producers who (i) own and/or actively farm [wheat (STCC ___) or barley (STCC ___)] in the state of Montana and who are represented by *PROORG(s)*, and (ii) tender their wheat and/or barley to a BNSF-served origin elevator from where the wheat and/or barley at issue is shipped BNSF direct to a BNSF-served destination greater than 250 miles from that origin. Producer hereby represents that it meets these eligibility criteria with respect to movements of [wheat/barley] originating on BNSF at _[insert specific Origin]_ and terminating on BNSF at _[insert specific Destination]. The rate that will be at issue in the mediation and arbitration is the specific individual current rate of [specify dollars/car] on movements of wheat between these specific points which is contained in BNSF Price Authority ____ (the "Issue Rate"), including applicable fuel surcharge, less any allowance(s) paid or credited by BNSF on such movement in the one year time period prior to commencement of the proceeding. *PROORG*(s) will give BNSF written notice of such request for mediation upon initiation of its handling of the dispute.

3. Use of Mediation and Arbitration

a. The Parties agree to use their best efforts to resolve the dispute regarding the Issue Rate through negotiation and mediation before resorting to arbitration and formal arbitration under this ADR process. A representative of a *PROORG* shall contact the BNSF notice party in this Agreement and advise that Producer desires to pursue mediation, and *PROORG* shall advise producer members of the opportunity for participation. BNSF agrees to meet with the Producer at a mutually convenient location within 30 days, and both BNSF and Producer agree to send representatives with the authority to resolve the dispute. BNSF and *PROORG* (acting as Producer's Representative) may designate a third individual to act as mediator at such negotiating session, in which case BNSF and *PROORG* agree to share equally the cost of such mediator. The Parties agree to use their best efforts to conduct such mediation expeditiously within such 30 days of notice.

b. If mediation is unsuccessful or both parties agree not to mediate, the Parties agree to submit their Issue Rate dispute for resolution by binding arbitration administered by the JAMS Dispute Resolution organization (www.jamsadr.com), ("JAMS"), by a panel of three arbitrators established in accordance with the procedures under the BNSF-Producer Agreement to Administer ADR ("Panel") and conducted pursuant to the Arbitration Rules of the National Grain and Feed Association ("NGFA Arbitration Rules") unless the Parties agree otherwise. Additional Producers who then execute this Agreement prior to the commencement of the arbitration under Section 11 may also participate in such arbitration over such Issue Rate. The Panel will issue a reasoned written decision. The arbitrators' decision will be enforceable in any court of competent jurisdiction and shall be subject to review only on the grounds for vacating an arbitration award set forth in Section 10 of the Federal Arbitration Act, 9 U.S.C. § 10 and for modifying or correcting an award set forth in Section 11 of the FAA, 9 U.S.C. § 11.

4. Limitation on Actions Other than Arbitration

By entering into this Agreement for ADR and pursuing its mediation and arbitration processes, any participating Producer and *PROORG(s)* waives any right either might otherwise have to challenge the reasonableness of the current level of the Issue Rate (whether affirmed or adjusted as a result of the ADR processes described herein) before the Surface Transportation Board ("STB") or in any other forum for a period of 1 (one) year from the date of this Agreement for ADR. *PROORG(s)*, as representative of such participating Producer also agrees that in the event any Issue Rate addressed under these procedures is challenged by another party before the STB, *PROORG(s)* will, at BNSF's request and expense, advocate before the STB in support of the Issue Rate (whether affirmed or adjusted as a result of the ADR processes described herein). Each participating Producer agrees, and *PROORG(s)*, agree that they will hold each other Party harmless for its role in this mediation and arbitration and agrees not to pursue any claim against *PROORG(s)* relating to *PROORG*'s handling or progression of this dispute and representation of Producer in this process it might have, regardless of outcome.

5. No Precedential Effect of Decision

The outcome of the arbitration and any decision issued by the Panel in connection with the arbitration procedures contained herein shall have no precedential effect in any subsequent arbitration of a rail grain rate dispute subsequently brought under this BNSF ADR program under this Agreement of ADR, whether brought by Producer or another entity; and the arbitrators shall not rely on any prior ADR decision under this process with any party.

6. Confidentiality

Commercial, financial and cost information exchanged by any party during the course of an arbitration proceeding shall be treated as confidential and not be intentionally disclosed to third parties, and the parties will enter into a Confidentiality Undertaking designed to protect the confidentiality of such information unless the parties agree otherwise. Unless otherwise agreed by the parties to a dispute, a bulletin shall be prepared by the Panel and issued by *PROORG(s)* reporting on the general outcome of an arbitration proceeding which would identify the parties to an arbitration under this Agreement for ADR, an award made, if any, the origin(s)-destination(s) involved, and a summary of the Panel's reasoning and conclusions.

7. Effective Period and Nature of Any Relief

Any relief obtained by Producer through the arbitration proceeding, including but not limited to the establishment of a maximum prospective Issue Rate, shall be effective for a time period of no more than one year from the issuance of the arbitration award, and fourteen months prior to, the date of the commencement of the binding arbitration process entered into pursuant to this Agreement for ADR. Commencement of arbitration shall occur at the point that the third arbitrator accepts his or her position on the Panel. Any and all prospective relief shall be in the form of an adjustment to the Issue Rate only; the Panel shall not have the authority to review and adjust the amount of any applicable fuel surcharge, or to order any relief below the eligibility levels provided in Section 9 for any period. Reparations, if any, found due by the arbitrators, shall be tendered by BNSF to *PROORG(s)*, in which case reparations would be available from the date fourteen months prior to commencement of the arbitration through the commencement of the arbitration, without accrual or payment of interest, and relief in the form of a rate prescription would be available for the one year period following the issuance of the arbitration award. *PROORG(s)* shall be responsible to distribute any reparations tendered by BNSF, net of *PROORG(s')* costs for the proceeding, to the participating Producer or Producers based upon such *PROORG*(s') equitable determination, in its sole discretion, of relative bushel utilization of a given Issue Rate by such Producer(s). The Producer(s) agree to be bound by such determination by *PROORG(s)* and the results of such joint handling among themselves. The authority of the arbitrators shall be limited to adjustment or findings applicable to the base Issue Rate, and the arbitrators shall have no authority to prescribe or award reparations of any kind relating to any fuel surcharge.

8. Factors to Be Considered by Arbitrators in Determining Entitlement to and Magnitude of Relief

PROORG(s) and BNSF will direct the arbitration Panel to evaluate the reasonableness of the rate level put in issue by the Producer by evaluating and taking into account the following factors:

(a) the absence or existence of competitive alternatives to the transportation to which the Issue Rate applies;
(b) capital requirements of the rail system used by Producer's traffic and the revenue available to sustain the network;
(c) rate levels on comparable traffic;
(d) applicable market factors comparing like movements from origins to similar markets for the same commodity;
(e) the overall costs of providing service covered by the rate being challenged; and
(f) relief would not be justified in the event a truck rate no higher (i.e., lower) than the contested rail rate is available to the Producer from origin to elevator destination for the same commodity for the specified mileage segment.

9. Eligibility for Relief Based on Ratio of Revenues to URCS Costs

Eligibility for relief in an arbitration hereunder shall be determined based on the ratio of the overall revenue generated by (i) the Issue Rate plus any applicable fuel surcharge, to (ii) the variable costs, including fuel costs, incurred on the movement at issue. Variable costs will be calculated based on the most recently available system average Uniform Rail Costing System ("URCS") variable costs for BNSF developed as described in Appendix A to this Agreement for Arbitration. If the revenue to variable cost ratio generated by the Issue Rate(less any allowances paid by BNSF on such movement in the one year time period prior to commencement of the arbitration proceeding) is less than 180 percent of variable costs for a non-shuttle shipper or less than 195 percent of variable costs for a shuttle shipper (as shuttle movement is defined in BNSF's *Shuttle Rules* available on its website, e.g., A BNSF shuttle is a 110-car train of dedicated high capacity (5161 cubic foot 286,000 lb GWCR) equipment with dedicated locomotives that loads in 15 hours and unloads in 15 hours), the Panel will have no authority to order relief. Subject to review by the arbitrators, BNSF will make modifications to the URCS-based revenue to variable cost ratios to reflect the relationship of the fuel cost component (mileage based surcharge) of the rate being challenged to historic URCS fuel cost values in light of the historic lag in the availability of URCS data as described in Appendix A.

10. Expedited Process

BNSF, *PROORG* and Producer will use their best efforts to complete the arbitration contemplated herein within a period of 120 days from the date of initiation of arbitration by complaint under section 11(a). The parties will advise JAMS and the Panel selected to arbitrate the dispute of the target date for completion of the arbitration and jointly urge the Panel to issue its decision no later than the target date. BNSF will pay JAMS the applicable initial administrative filing fee, including the arbitrators' fees, fees assessed by JAMS for handling the proceeding, and the *PROORG* will reimburse BNSF for such costs of the arbitration paid to JAMS and the arbitrators' fees and expenses if the Producer is not awarded relief in the proceeding.

11. Procedures Governing Arbitration

The procedures governing the institution, preparation, handling and resolution of a grain rate dispute arbitration will be those specified in the NGFA Arbitration Rules, except as augmented and modified in the following sub-sections or agreed to by the Parties:

a. Complaint. If *PROORG*(s) and Producer(s) elect to proceed to arbitration, the *PROORG* or *PROORGs* acting on behalf of Producer(s) shall initiate its complaint seeking arbitration within 45 days of the completion of mediation by serving it upon BNSF (which shall file with JAMS in accord with the BNSF- Producer Organizations Agreement to Administer ADR). In addition to the matters specified in the NGFA Arbitration Rules, the complaint filed by Producer shall set forth: (i) a statement of eligibility to pursue the ADR procedure, including a specification of the origin, destination, current Issue Rate, rate authority, and STCC for the challenged movement and confirmation that the Producer did tender that quantity of commodity for shipment from origin to destination during the prior annual period or confirmation that the Producer did sell a specified quantity of wheat and/or barley to a grain elevator at origin that was subsequently tendered to BNSF for shipment from origin to destination during the prior annual period beginning after the execution of this Agreement; (ii) the volume of traffic moved under the Issue Rate or previously effective rate for the prior two years; (iii) the traffic projected to move under the Issue Rate for the next two years; (iv) other commodities shipped by Producer by rail at either the origin or the destination covered by the Issue Rate; (v) evidence of the absence of actual and potential intramodal and intermodal competition for the transportation at issue; (vi) the revenue to variable cost ratio on the movement at issue and/or a request for data sufficient to permit the Producer to calculate such ratios; (vii) evidence of relevant market factors and their impact; (viii) any other evidence that Producer believes to be probative in light of the factors to be considered by the arbitrators set out in Section 8 of this Agreement for ADR.

b. Answer. In addition to the matters specified in the NGFA Arbitration Rules, the answer filed by BNSF shall set forth: (i) any defense to an allegation of absence of effective competition; (ii) BNSF's calculation of the revenue to variable cost ratio on the movement at issue; (iv) identification of other traffic that should be included in the complaint; (v) claim of grain draw argument defense; (vi) effects of reduced revenue on the movement at issue; (vii) any other evidence that BNSF believes to be probative in light of the factors to be considered by the arbitrators set out in Section 7 of this Agreement for ADR.

c. Discovery. At any time after the effective date of this Agreement for ADR up through the filing of BNSF's answer, either party may file limited written discovery requests, as follows, unless additional discovery specifically authorized by the Panel: (i) no more than 5 requests for production of documents (including subparts); (ii) no more than 20 interrogatories (including subparts). Depositions will not be permitted. Any disputes regarding discovery will be resolved by the Panel appointed to decide the arbitration.

d. Evidence and Attendance of Affiants at Hearing. Evidence will be submitted, and oral hearings conducted, in accordance with the applicable provisions of the NGFA Arbitration Rules as determined by the arbitrators. If a hearing is held, each party will be required to present the live testimony of at least one witness at the hearing.

12. Notices

Except as expressly provided otherwise, any notice, election or other correspondence required or permitted hereunder shall become effective upon receipt and, except invoices and payments, shall be deemed to have been properly given or delivered when made in writing and delivered personally to the party to whom directed, or when sent by United States certified mail with all necessary postage or overnight delivery service and charges fully prepaid, return receipt requested, and addressed to the party at the below-specified address:

Notices to *PROORG(s)*:
_[Insert] _____

Copy to:
__[Insert]______________

Notices to Producer:
__[Insert]______________

Copy to:
__[Insert]______________

Notices to BNSF Railway Company:

The BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76102
Attn: Group VP Agricultural Products

Copy to:
The BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, TX 76102
Attn: VP & General Counsel - Regulatory

The addresses may be changed upon written notice in the manner provided above, and no amendment hereof shall be required for a change of address. If given by telephone, fax or verbally, the notice shall be confirmed in writing in accord with the provisions of this Section as practicable thereafter.

IN WITNESS WHEREOF, the Parties to this Agreement for Mediation and Arbitration have caused their duly authorized representatives to execute it as of the day and year first above written.

[Producer]

By: ______________________ Date: ______________________

[*PROORG*]

By: ______________________ Date: ______________________

BNSF Railway Company

By: ______________________ Date: ______________________

Appendix A To
Agreement for Binding Arbitration of Rail Grain Rate Disputes

Required URCS Inputs

Parameter	Methodology
Carrier	Select the carrier (BNSF).
Distance	Calculate BNSF miles from origin to destination (or interchange point). Use "shortline miles" (i.e., rail miles calculated by the STB, or by a third party such as ALK or Rand McNally), not actual "cycle miles" (i.e., actual rail miles for the shipment in question, recorded by the carrier). Shortline miles represent the public information about the move, and are appropriate in a regulatory setting. The URCS model adjusts shortline miles by a carrier-specific average circuity factor to approximate actual miles.
Shipment Type	The user has 4 options for use in the arbitration. Select the appropriate option based on shipment information obtained from the Waybill, the carrier's internal data, or other sources as appropriate. The options are: • *Originate & Terminate*: local shipment • *Originate & Deliver*: forwarded shipment • *Receive & Deliver*: bridge shipment • *Receive & Terminate*: received shipment
Number of Cars	Specify the number of freight cars moving in the shipment. (Note that this is different from the number of cars in the train. While a unit train of 115 cars contains a single 115-car shipment, a merchandise train of 100 cars might contain 20 5-car shipments.)
Car Type	Identify the freight car type and whether railroad owned, controlled or provided. The URCS model gives the user 17 car type options (plus an 18th "all other" option). The URCS model car types correspond to the car types in STB Schedule 710 (lines 36-52), which can be mapped to AAR car type codes (A123, e.g.).
Car Ownership	Identify car ownership as railroad-owned or privately-owned. Cars owned by carriers other than the operating carrier are considered railroad-owned.
Tons per Car	Calculate the average lading tons per car for the shipment. (Exclude the tare weight of the car.)
Commodity	Identify the commodity by STCC code. The URCS model allows 82 unique STCC codes of varying lengths between 2 and 5 digits (i.e., STCC 11 for "Coal", or STCC 26211 for "Newsprint"). Convert each shipment's 5- or 7-digit STCC code into the appropriate URCS STCC code, using as detailed a STCC code as possible.
Movement Type	Identify the movement type based on the number of cars in the shipment. Following the STB methodology, shipments with 1-5 cars are classified as "Single"; shipments with 6-49 cars are classified as "Multiple." Shipments with 50 or more cars are classified as "unit".
Movement Parameters	URCS default detailed movement parameters are to be used for costing.
URCS Update	Once total URCS costs are Calculated, the total URCS costs are adjusted by the percentage change in operating expense per GTM for the year the moves are being challenged versus the operating expense per GTM for the year that URCS program costs are based upon. The operating expenses and GTM's are available in quarterly BNSF SEC filings, and the operating expenses shall be adjusted to exclude any fuel hedge benefit or liability
Fuel Surcharge Revenue Adjustment	BNSF will make modifications to the URCS-based revenue to variable cost ratios to reflect the relationship of the fuel surcharge assessed with the rate being challenged to historic URCS fuel cost values in light of the historic lag in the availability of URCS data. The modification shall be made by adjusting the fuel surcharge based on the simple average of the fuel surcharge rates in effect for the same time period as the URCS costs represent (as published on the BNSF web site) in effect for the same time period as the URCS costs represent.

IMPACT OF BNSF'S 48 CAR RESTRICTION ON R/VC PERCENTAGES ASSOCIATED WITH MONTANA WHEAT MOVEMENTS FROM 52-CAR ORIGINS TO THE PNW (RIVERGATE, OR)

			2008 BNSF 52-Car Min. & Intial 48-Car Rate Level 2/			R/VC *Before* BNSF's 48 Car Restriction 3/		R/VC *After* BNSF's 48 Car Restriction 4/			Current BNSF (2Q/2011) 48-Car Rate Level 6/				Current (2Q/2011) 48-Car R/VC 7/		Current (2Q/2011) 52-Car R/VC 8/	
Ln.	Origin (1)	BNSF Miles 1/ (2)	Rate Per Car (3)	Fuel Surcharge Per Car (4)	Total Revenue Per Car (5)	52-Car Var. Cost Per Car (6)	52-Car R/VC (7)	48-Car Var. Cost Per Car (8)	48-Car R/VC (9)	Initial R/VC Reduction (10)	Rate Per Car (11)	Fuel Surcharge Per Car (12)	Total Revenue Per Car (13)	Increased Revenue Per Car (14)	48-Car Var. Cost Per Car (15)	48-Car R/VC (16)	52-Car Var. Cost Per Car (17)	52-Car R/VC (18)
1	Big Sandy	913	$3,266.00	$353.83	$3,619.83	$1,714.69	211%	$2,362.81	153%	58%	$4,055.00	$566.99	$4,621.99	$1,002.16	$2,463.11	188%	$1,760.09	263%
2	Conrad	811	$3,031.00	$312.01	$3,343.01	$1,535.57	218%	$2,116.86	158%	60%	$3,788.00	$499.98	$4,287.98	$944.97	$2,209.54	194%	$1,578.73	272%
3	Cut Bank	755	$2,921.00	$289.05	$3,210.05	$1,437.23	223%	$1,981.84	162%	61%	$3,661.00	$463.19	$4,124.19	$914.14	$2,070.33	199%	$1,479.16	279%
4	Dutton	841	$3,031.00	$324.31	$3,355.31	$1,588.25	211%	$2,189.20	153%	58%	$3,798.00	$519.69	$4,317.69	$962.38	$2,284.12	189%	$1,632.07	265%
5	Fairfield 9/	885	$3,266.00	$342.35	$3,608.35	$1,665.52	217%	$2,295.29	157%	60%	$3,904.00	$548.60	$4,452.60	$844.25	$2,393.50	186%	$1,710.31	260%
6	Ft. Benton	920	$3,129.00	$356.70	$3,485.70	$1,726.98	202%	$2,379.68	146%	56%	$3,920.00	$571.59	$4,491.59	$1,005.89	$2,480.51	181%	$1,772.54	253%
7	Geldford	856	$3,199.00	$330.46	$3,529.46	$1,614.59	219%	$2,225.37	159%	60%	$3,828.00	$529.54	$4,357.54	$828.08	$2,321.41	188%	$1,658.74	263%
8	Glasgow	1,030	$3,675.00	$401.80	$4,076.80	$1,920.15	212%	$2,644.92	154%	58%	$4,360.00	$643.86	$5,003.86	$927.06	$2,753.96	182%	$1,968.12	254%
9	Glendive	1,240	$3,763.00	$487.90	$4,250.90	$2,288.93	186%	$3,151.27	135%	51%	$4,654.00	$781.83	$5,435.83	$1,184.93	$3,276.01	166%	$2,341.51	232%
10	Great Falls	875	$3,031.00	$338.25	$3,369.25	$1,647.96	204%	$2,271.18	148%	56%	$3,808.00	$542.03	$4,350.03	$980.78	$2,368.64	184%	$1,692.53	257%
11	Hardin	1,075	$3,235.00	$420.25	$3,655.25	$1,999.18	183%	$2,753.42	133%	50%	$4,075.00	$673.43	$4,748.43	$1,093.18	$2,865.83	166%	$2,048.14	232%
12	Havre	885	$3,266.00	$342.35	$3,608.35	$1,665.52	217%	$2,295.29	157%	60%	$3,904.00	$548.60	$4,452.60	$844.25	$2,393.50	186%	$1,710.31	260%
13	Kershaw	915	$3,129.00	$354.65	$3,483.65	$1,718.20	203%	$2,367.63	147%	56%	$3,919.00	$568.31	$4,487.31	$1,003.66	$2,468.08	182%	$1,763.65	254%
14	Ludington 10/	1,176	$3,903.00	$461.66	$4,364.66	$2,176.54	201%	$2,996.95	146%	55%	$4,773.00	$739.78	$5,512.78	$1,148.12	$3,116.91	177%	$2,227.72	247%
15	Merc	1,200	$3,914.00	$471.50	$4,385.50	$2,218.69	198%	$3,054.82	144%	54%	$4,652.00	$755.55	$5,407.55	$1,022.05	$3,176.57	170%	$2,270.39	238%
16	Merewether	735	$2,874.00	$280.85	$3,154.85	$1,402.10	225%	$1,933.61	163%	62%	$3,608.00	$450.05	$4,058.05	$903.20	$2,020.61	201%	$1,443.60	281%
17	Miles City	1,165	$3,581.00	$457.15	$4,038.15	$2,157.23	187%	$3,407.55	119%	68%	$4,449.00	$732.56	$5,181.56	$1,143.41	$3,089.57	168%	$2,208.16	235%
18	Moccasin	963	$3,129.00	$374.33	$3,503.33	$1,802.49	194%	$2,483.37	141%	53%	$3,904.00	$599.84	$4,503.84	$1,000.51	$2,587.40	174%	$1,848.99	244%
19	Plentywood 11/	1,202	$3,914.00	$472.32	$4,386.32	$2,222.20	197%	$3,059.64	143%	54%	$4,652.00	$756.86	$5,408.86	$1,022.54	$3,181.55	170%	$2,273.95	238%
20	Poplar	1,100	$3,818.00	$430.50	$4,248.50	$2,043.08	208%	$2,813.70	151%	57%	$4,525.00	$689.85	$5,214.85	$966.35	$2,927.98	178%	$2,092.59	249%
21	Rudyard	844	$3,173.00	$325.54	$3,498.54	$1,593.52	220%	$2,196.43	159%	61%	$3,799.00	$521.66	$4,320.66	$822.12	$2,291.58	189%	$1,637.41	264%
22	Sidney 12/	1,185	$3,874.00	$465.35	$4,339.35	$2,192.35	198%	$3,018.65	144%	54%	$4,745.00	$745.70	$5,490.70	$1,151.35	$3,139.28	175%	$2,243.72	245%
23	Tiber	819	$3,116.00	$315.29	$3,431.29	$1,549.62	221%	$2,136.15	161%	60%	$3,876.00	$505.23	$4,381.23	$949.94	$2,229.43	197%	$1,592.96	275%
24	Valier	825	$3,031.00	$317.75	$3,348.75	$1,560.15	215%	$2,150.62	156%	59%	$3,793.00	$509.18	$4,302.18	$953.43	$2,244.34	192%	$1,603.62	268%
25	Wolf Point	1,078	$3,776.00	$421.48	$4,197.48	$2,004.44	209%	$2,760.65	152%	57%	$4,475.00	$675.40	$5,150.40	$952.92	$2,873.29	179%	$2,053.47	251%
26	Weighted Average 13/						205%		147%	58%				$1,003.40		180%		252%

IMPACT OF BNSF'S 48 CAR RESTRICTION ON R/VC PERCENTAGES ASSOCIATED WITH MONTANA WHEAT MOVEMENTS FROM 52-CAR ORIGINS TO THE PNW (RIVERGATE, OR)

Footnotes:

1/ BNSF Miles to Rivergate (Source - BNSF). BNSF uses the miles to Seattle for fuel surcharge calculations (see BNSF Rule Book 6100-A, page 42), which, in each case, is 50 miles shorter. 109 tons per car used.

2/ Rates are from BNSF 4022-L, Item 43412, effective November 15, 2007, Col.2 (286,000 lb. cars) and Item 43413, effective April 17, 2008, Col.2. Fuel surcharge of $0.41 per mile used (January 2009).

3/ Variable cost based on BNSF 2008 Unadjusted URCS costs. R/VC (Col.8) equals Col.6 / Col.7.

4/ Variable cost based on BNSF 2008 Unadjusted URCS costs. R/VC (Col.10) equals Col.6 / Col.9.

5/ Col 8 minus Col 10.

6/ Rates are from BNSF 4022-L, Item 43404, effective March 1, 2011, Col.2 (286,000 lb. cars). Fuel surcharge of $0.657 per mile used (2Q/2011 - Average of BNSF's applicable April, May and June 2011 surcharges)

7/ Variable cost based on BNSF 2009 Unadjusted URCS costs, indexed to a current level (2Q/2011 - 1.16044). R/VC (Col.17) equals Col.14 / Col.16.

8/ Variable cost based on BNSF 2009 Unadjusted URCS costs, indexed to a current level (2Q/2011 - 1.16044). R/VC (Col.19) equals Col.14 / Col.18.

9/ BNSF 52-car minimum and 48-car rate publications do not include Fairfield. The Havre rates were used since it is the same distance to Rivergate (885 miles).

10/ BNSF's 2008 rate item does not include a Col. 2 (286,0000 lb.) rate for Ludington, therefore, the rate was estimated based on a difference of $323 00 per car.

11/ BNSF 52-car minimum and 48-car rate publications do not include Plentywood. The Marc rates were used since it is the distance to Rivergate are similar (1,202 vs. 1,200 miles).

12/ BNSF's 2008 rate item does not include a Col. 2 (286,0000 lb.) rate for Sidney, therefore, the rate was estimated based on a difference of $323.00 per car.

13/ Weighted based on the 2010 total cars to the PNW (see Appendix GWF-2).

SUMMARY OF 2009 CARS OF FARM PRODUCTS (STCC 01) ORIGINATING FROM MONTANA 52-CAR ORIGINS

			STB 2009 Waybill Sample Cars										
						Other STCC 01 Railroad Cars From Montana 52-Car Origins							
		BNSF 2009 Wheat Cars to	Wheat (STCC 01-137) Cars From Montana 52-Car Origins			Barley (01-131)	Grain, NEC (01-139)	Oil Seeds (01-149)	Beans (01-341)	Peas (01-342)	Cowpeas (01-343)	Total Other	Total
Ln.	Item	PNW 1/	to PNW	To Other	to U.S.	to U.S.	to U.S.	to U.S.	to U.S.	to U.S.	to U.S.	STCC 01	(STCC 01)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
1	Big Sandy												
2	Conrad												
3	Cut Bank												
4	Dutton												
5	Fairfield												
6	Ft. Benton												
7	Gildford												
8	Glasgow												
9	Glendive 2/												
10	Great Falls												
11	Hardin												
12	Havre 2/												
13	Kershaw												
14	Ludington												
15	Merc												
16	Merewether												
17	Miles City												
18	Moccasin												
19	Plentywood												
20	Poplar												
21	Rudyard 2/												
22	Sidney												
23	Tiber												
24	Valier												
25	Wolf Point												
26	**Total**												
27	**Percent of Total**												

Footnotes

1/ Based on 100% traffic tape data supplied by BNSF to Montana in discovery
2/ 110-car shuttle facilities are also included at these 52-car origins which could not be distinguished from the Waybill Sample data. It was assumed that the PNW cars (with the exception of cars from Havre) originated from the 110 car facilities and other STCC 01 cars came from the 52-car origins

2010 BNSF Average Train Weights
For Wheat Shipments from Montana
52-Car Origins to the PNW
(Gross Tons)

		Average Train Weight (Gross Tons)						
Item	**Cars**	**Train 1**	**Train 2**	**Train 3**	**Train 4**	**Train 5**	**Train 6**	**Train 7**
One Train								
Two Trains								
Three Trains								
Four Trains								
Five Trains								
Six Trains								
Seven Trains								
Total / Avg.								